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First Session, 39th Parliament

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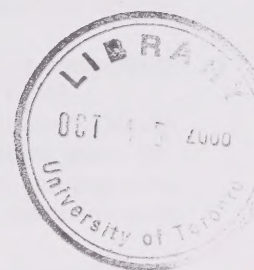
Première session, 39^e législature

Official Report of Debates (Hansard)

Tuesday 7 October 2008

Journal des débats (Hansard)

Mardi 7 octobre 2008



Standing Committee on Government Agencies

Intended appointments

Comité permanent des organismes gouvernementaux

Nominations prévues

Chair: Julia Munro
Clerk: Douglas Arnott

Présidente : Julia Munro
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 7 October 2008

Mardi 7 octobre 2008

The committee met at 0931 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mrs. Julia Munro): Good morning, everyone, and welcome to the Standing Committee on Government Agencies.

We're very pleased that we have a delegation. Welcome to Queen's Park and to our committee. I should just say, by way of introduction, that we normally meet each week when the House is in session and consider either agencies themselves or appointments to agencies. You'll have a sense of that this morning because we will be looking at the work of the committee by way of its committee reports as well as its intended appointees. I certainly hope you find being here useful.

I'm going to ask, as part of the first order of business this morning, that we have the subcommittee report on committee business dated Thursday, October 2. Ms. Sandals.

Mrs. Liz Sandals: I move that the subcommittee report of Thursday, October 2, 2008, be adopted.

The Chair (Mrs. Julia Munro): Ms. Sandals has moved its adoption. Is there any discussion? Seeing none, all in favour? Opposed? The motion is carried.

INTENDED APPOINTMENTS

LESLIE BENECKI

Review of intended appointment, selected by third party: Leslie Benecki, intended appointee as member, South East Local Health Integration Network.

The Chair (Mrs. Julia Munro): We will now move to today's appointment review. I would ask for Leslie A. Benecki, the intended appointee as member, South East Local Health Integration Network. Good morning, and welcome to the committee.

As you might know, you have the opportunity to make a few comments, should you wish, and then we will have questions from the members of the committee. This morning, we will begin with the government members. But if you're ready, please feel welcome to begin.

Ms. Leslie Benecki: Thank you for the opportunity to meet with you. For 20 years, I have worked in the health care sector and have been an active community volunteer. My graduate degrees are in management: one in health services administration, and the other in business.

My work as a clinical dietitian has given me experience as an allied health care professional.

I have significant experience in community-based organizations, both as a hands-on volunteer and as a board member. For example, in Kingston I have co-chaired two school councils, and I'm currently on the board of the Canadian chapter of the American College of Healthcare Executives.

My commitment to engaging others in community development will support the work of the board.

When the Kitchener Downtown Community Health Centre started, our organization was able to move forward quickly by fostering a shared vision, forming community partnerships and developing an environment of trust and mutual respect.

My work style is collaborative but purposeful. My planning and strategic management skills are excellent, and I have a history of completing work on time, on budget and with involvement from others.

My strong professional leadership skills have been recognized, including receiving the K-W Oktoberfest Professional Woman of the Year award in 2001.

Another strength I bring to the board is a strong understanding of the various roles of government and the health care sector. I worked as a manager at Alberta Health and was responsible for implementing pilot projects on primary health care reform. At the community health centre, I was accountable for core funding provided by the Ontario government, as well as the transfer payment agency contract for midwifery services.

During my work as a research associate at Queen's University, I conducted field work throughout the South East LHIN area on a project related to primary care for people with disabilities. This research, funded by the primary care health transition fund, was administered by the Ministry of Health and Long-Term Care.

I understand the complexity of health care and integration issues within the traditional health care sector and the broader community.

I have been a part of several new initiatives, including the creation of a non-profit housing organization in the 1980s, working at Alberta Health during the 1990s when regionalization was initiated, and being the founding executive director of a community health centre in the early 2000s.

Last year, I became the founding secretary for the Canadian chapter of the American College of Healthcare

Executives. This is a health care leadership professional organization.

My capacity to focus on priorities, develop strategic plans, monitor progress and keep a broad long-term perspective has helped me to be successful, and I look forward to applying these skills at the South East LHIN.

The Chair (Mrs. Julia Munro): Thank you very much. Mrs. Sandals.

Mrs. Liz Sandals: Thank you very much for appearing before us this morning. The government will be supporting your appointment. I think that with your background in health administration, your academic qualifications and your experience with a variety of boards and agencies, you will be a great asset to the LHIN board.

The Chair (Mrs. Julia Munro): Mr. Shurman.

Mr. Peter Shurman: You have a very impressive resumé, which I've just read. Thank you very much for your presentation. Could you tell me how you heard about the appointment opening?

Ms. Leslie Benecki: Sure. When the LHINs were first announced in 2004 to the beginning of 2005, there were a number of public calls for board members. That's how I initially heard about the board appointments. I think it was through the newspaper.

Mr. Peter Shurman: You were motivated to apply immediately? Or did somebody ask you?

Ms. Leslie Benecki: Nobody asked me. I was interested in regionalization because of my experience in Alberta and thought that it was a really interesting opportunity. At the time, in 2005, I did put forth an application. However, by the time the interview process started for that, about six or seven months had passed and I had just started a new job at Queen's University. The timing wasn't very good for me at that point, so I said, "Maybe another opportunity will come up," and here we are a few years later.

0940

Mr. Peter Shurman: Can we spend a minute or two on the comparison between the Alberta model and the local health integration network model of Ontario? You have experience with the regional model of Alberta. Could you give us a bit of a comparative?

Ms. Leslie Benecki: I think that the regionalization process in Alberta was about 15 years ago now, and they took a somewhat more aggressive approach to regionalization in the sense that they disbanded the hospital boards and things and said, "We're going to have these various regions." Ontario has not done that and I think there's a lot of good merit in doing that, because it allows Ontario to continue to form partnerships and maintain institutional history and build support through the local communities.

Mr. Peter Shurman: What are the particular issues that you find affect the LHIN for which you've applied that make it different in the southeast area?

Ms. Leslie Benecki: That make it different—

Mr. Peter Shurman: That may be different from any other area. You obviously know this LHIN.

Ms. Leslie Benecki: I know the area, yes. I think one of the challenges that the South East LHIN has is that we have a very rural population, and that means the people have to go fairly long distances for health care unless you live right in that 401 corridor. Our wait times are not acceptable for some of our acute care services, and there will be efforts to work on that over time.

Mr. Peter Shurman: Have you ever personally taken part in any of the consultative elements of the South East LHIN? Have you been actively involved?

Ms. Leslie Benecki: I have attended several board meetings for the South East LHIN—as you may know, they're open to the public, and I have availed myself of that opportunity. There have been lots of documents that have gone up on the website regarding the South East LHIN and I have looked at those. When the initial plan came out several years ago, I had the opportunity to provide comments on that, as all members of the public do.

The Chair (Mrs. Julia Munro): We'll move to Ms. Gélinas.

M^{me} France Gélinas: Good morning, Ms. Benecki. I think we have met in a previous life. You were executive director in Kitchener when I was executive director in Sudbury.

Ms. Leslie Benecki: Ah, indeed.

M^{me} France Gélinas: This aside, I didn't recognize your name.

The first thing I'd like to talk about is that, as you know, primary care physicians etc. are not included in the local health integration networks throughout Ontario, and I'd like to have your opinion on that. Should primary care be under the power of the LHINs?

Ms. Leslie Benecki: I think that's an evolving process and that the work that's set out for the LHINs right now is great and complex. The primary care physicians under the fee-for-service payments have traditionally worked in a different scope, and that has been the case in regionalization across the country. Over time, clearly there will be partnerships, and there are partnerships already forming with the new family health teams. Community health centres have primary care services and they are going to be under the LHINs starting next year. There will be a natural progression of partnership; whether or not they will come directly under the LHINs remains to be seen.

M^{me} France Gélinas: My second question is: If you've attended a few of the board meetings of the LHINs, you realize that they have some very tough decisions to make. I'm trying to get a little bit at your values with the next question and it goes something like this: One of the hospitals in your LHIN has presented a deficit budget. That was not acceptable. The LHIN would have asked them to submit a balanced budget in order to meet their accountability agreement. In order to balance their budget, they decided to divest their outpatient physiotherapy to a private for-profit that exists in the same community, down the street from the hospital. The hospital is now able to submit a balanced budget and meet the criteria of their accountability agreement, but

physiotherapy is now available down the street at the private for-profit. They have looked and looked at their budget, and that was the only way that they could submit a balanced budget to the LHIN. How would you tackle that decision?

Ms. Leslie Benecki: I think one of the challenges there is that physical therapy is not traditionally covered, so if there is a private centre for physical therapy in a community, unless somebody has private health care insurance, they're not going to be covered for that. I think that there are some real challenges there.

In terms of having a service that is provided in a community and then taking it away, it creates some challenges. It would be my thought that you would work very hard to see what services could be retained in the community instead of divesting of those.

M^{me} France Gélinas: I don't know if you're aware, but the Ontario Health Council yesterday released a report that shows a very aggressive drive by some US-led multinationals who want to set up private clinics in Ontario. The main drives have been in Toronto and Ottawa, but your area could certainly be next on the list. Kingston is a fairly big centre. I just wanted to have your views on that prospect.

Ms. Leslie Benecki: As you know, the Canada Health Act outlines five criteria for public health care services, including comprehensiveness, accessibility, and public administration, which is also one of them. With the Free Trade Act, my understanding is that once a service is provided and there is payment, that opens the door for that, and you can't really shut it. I've worked in both systems—in the United States and in Canada—and I think that having a public administration reduces costs and can help streamline efforts. I would be very cautious about looking at that option.

M^{me} France Gélinas: I know that you have a very long waiting list for knee and hip replacement in your particular LHIN, and I had highlighted it, but I can't find it right now. I think it says that in your LHIN, you have something like a 70% higher wait for hips and knees. Some of the private companies offer to take out some of that load and set up a private hospital in your area so that people wouldn't have to wait so long for hip and knee surgery. As a member of the LHIN, would you support that decision?

Ms. Leslie Benecki: Again, I think that it would be very important to look at all of the aspects of that. You're right. Hips and knees wait times are very high in our area. I think it's 350 days for a hip; that's a long time. But I also think it would be important to weigh off the costs of that, and the long-term implications of having a for-profit company come in and try to make a quick fix that might have long-term implications that might not put us in a position where we'd want to be.

M^{me} France Gélinas: I very much appreciate your answer, and I agree with you. I'm with the NDP, and we certainly oppose privatization at every step of the way. We need people like you to be on the LHIN board to make sure that you keep medicare the way it is—based

on needs and not on the ability to pay. I will be supporting your appointment. Thank you.

Ms. Leslie Benecki: Thank you.

The Chair (Mrs. Julia Munro): Well, thank you very much. That concludes the questions from the committee. We certainly appreciate your coming here today.

Committee, I would just remind you that we may now proceed to concurrences. We will now consider the intended appointment of Leslie A. Benecki, intended appointee as member, South East Local Health Integration Network.

0950

Mrs. Liz Sandals: I move concurrence in the appointment of Leslie A. Benecki as a member of the South East Local Health Integration Network.

The Chair (Mrs. Julia Munro): Concurrence in the appointment has been moved by Ms. Sandals. Any discussion?

Mr. Michael A. Brown: Recorded vote.

Ayes

Brown, Crozier, Gélinas, Jaczek, Sandals.

The Chair (Mrs. Julia Munro): The motion is carried.

That concludes the section of our business on intended appointments.

SUBCOMMITTEE REPORT

The Chair (Mrs. Julia Munro): Our last order of business today is the report of the subcommittee on committee business dated Tuesday, September 30, relating to agency reviews.

Mrs. Liz Sandals: I move approval of the report of the subcommittee dated Tuesday, September 30, 2008, which reads as follows:

Your subcommittee on committee business met on Tuesday, September 30, 2008, to consider the method of proceeding on agency reviews and recommends the following:

(1) That the committee schedule agency responses, followed by draft report writing, as follows:

October 21: Ontario Trillium Foundation

November 4: Ontario Infrastructure Projects Corp. (Infrastructure Ontario)

November 25: Ontario Educational Communications Authority (TV Ontario)

(2) That draft report writing be conducted in closed session.

(3) That the research officers prepare a draft report on each agency, and that each draft report contain a summary of the agency presentation, a summary of stakeholder presentations and recommendations and possible draft recommendations for the committee's consideration.

(4) That the research officers provide the committee members with the preliminary draft reports by 12 noon

on Tuesday of the week prior to the date scheduled for draft report writing, as follows:

October 14: Ontario Trillium Foundation

October 28: Ontario Infrastructure Projects Corp. (Infrastructure Ontario)

November 18: Ontario Educational Communications Authority (TV Ontario)

(5) That the committee prepare and present a separate report to the House on each agency reviewed.

(6) That the committee commence its next round of agency reviews by scheduling the Ontario Securities Commission to appear on Tuesday, December 2, 2008.

(7) That the committee's procedures adopted for the first round of agency reviews continue to be observed so far as may be applicable through the next round of agency reviews.

(8) That the subcommittee meet to consider a proposed meeting schedule for the committee's ongoing agency reviews, and direct the Chair to seek authorization by the House of committee meeting time during the winter recess.

(9) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair (Mrs. Julia Munro): Is there any discussion on the subcommittee report?

Mr. Jim Wilson: I know I don't get to vote on this, just being a last-minute attendee here, but I'm just wondering as a courtesy—Lisa MacLeod, who is a member of the committee, is speaking in the House in about four or five minutes. I was wondering if the committee, before you pass this, could take a recess so she could come down here and give you her two cents worth, just as a courtesy to her, because we are dealing with a substantive government motion in the House dealing with the standing orders.

The Chair (Mrs. Julia Munro): Yes, Mrs. Sandals?

Mrs. Liz Sandals: Actually, I'm not a subcommittee member. I'm also subbing for the subcommittee member, but I would ask the Chair if perhaps she could comment. My understanding was that there was all-party concurrence in the subcommittee report.

The Chair (Mrs. Julia Munro): Yes, there was.

Mr. Jim Wilson: Okay, I'll take your word for it.

Mrs. Liz Sandals: Take Julia's word for it.

The Chair (Mrs. Julia Munro): No, there was.

Mr. Jim Wilson: Oh, did I put that on the record?

Mrs. Liz Sandals: You don't have to take mine.

Mr. Jim Wilson: It's okay, Liz; I do anyway. It's just Lisa didn't give any instructions—

The Chair (Mrs. Julia Munro): No.

Mrs. Liz Sandals: My understanding from our member and Julia's agreeing was that there was all-party support of the subcommittee.

The Chair (Mrs. Julia Munro): That's right, at the subcommittee level, of course at which she participated. But you had a comment as well, Ms. Gélinas?

M^{me} France Gélinas: Did I miss it, or did we agree that the Ontario Securities Commission would come before us at the beginning of December?

The Chair (Mrs. Julia Munro): Yes, it's in here.

M^{me} France Gélinas: It is. Sorry.

The Chair (Mrs. Julia Munro): It's item number 6.

M^{me} France Gélinas: That's what I thought, but I wasn't sure. I wanted to check.

The Chair (Mrs. Julia Munro): Any other comments?

I would just direct you to point 4. Obviously, we need to make a minor adjustment to the October 14 date.

Mrs. Liz Sandals: Would you like me to amend that to the 15th or ask someone to amend that to the 15th?

M^{me} France Gélinas: I think we can agree to amend it to the 15th.

Mrs. Liz Sandals: Yes, I think we're fine with amending that to the 15th.

The Chair (Mrs. Julia Munro): Okay. Thank you.

Mrs. Liz Sandals: I would just note that number 9 may be somewhat fluid, depending on when we resume sitting in the winter. But that's something the subcommittee can deal with later.

The Chair (Mrs. Julia Munro): That's right. And if you look at point 8, the subcommittee then would undertake that responsibility, if that clarifies that point for you.

Any other comments about this? Then I would ask, if there is not any further discussion, all in favour? Opposed? The motion is carried.

Is there any other business? Seeing none, the meeting is adjourned until 9 a.m. on Tuesday, October 21, again in committee room 228. That's when we will resume our agency review of the Ontario Trillium Foundation. This committee stands adjourned until then.

The committee adjourned at 0955.

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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 21 October 2008

Mardi 21 octobre 2008

The committee met at 0901 in room 228.

SUBCOMMITTEE REPORTS

The Chair (Mrs. Julia Munro): Good morning and welcome to the Standing Committee on Government Agencies.

I draw your attention to this morning's agenda, which will begin with the report of the subcommittee on committee business dated Thursday, October 9.

Mrs. Liz Sandals: I move that the committee approve the report of the subcommittee dated Thursday, October 9, 2008.

The Chair (Mrs. Julia Munro): Any discussion? Seeing none, all in favour? Opposed? Thank you. The motion is carried.

Our next order of business is the report of the subcommittee on committee business dated Thursday, October 16.

Mrs. Liz Sandals: I move that the committee adopt the report of the subcommittee dated Thursday, October 16, 2008.

The Chair (Mrs. Julia Munro): Any discussion? Seeing none, all in favour? Opposed? Thank you. The motion is carried.

INTENDED APPOINTMENTS

JUDITH KEENE

Review of intended appointment, selected by official opposition party: Judith Keene, intended appointee as member and vice-chair, Human Rights Tribunal of Ontario.

The Chair (Mrs. Julia Munro): Now we will proceed to the appointment review. This morning our interview is with Judith Keene, the intended appointee as member and vice-chair, Human Rights Tribunal of Ontario.

Ms. Keene, please come forward. Good morning and welcome to the committee.

Ms. Judith Keene: Good morning.

The Chair (Mrs. Julia Munro): As you may be aware, you have an opportunity to make statements if you wish. Subsequent to that, we will then consider questions from members of the committee. So, if you're ready, please begin.

Ms. Judith Keene: I would like to make a brief statement; thank you.

Good morning, Madam Chair, and good morning, members of the committee. Thank you for giving me the opportunity to come here today and speak to you. I'm here to tell you a little bit about my interest in this appointment as a member and vice-chair of the Human Rights Tribunal and answer any questions you might have for me.

I'm honoured to be considered for an appointment to the Human Rights Tribunal of Ontario and to be given an opportunity to participate in a tribunal that has an important role to play in the province. I believe I can make a contribution.

I think you have my application documents in front of you, so you know my legal background and generally what I've done in terms of a career. Human rights law has been an interest and an area of specialization for me since 1980, when I was a student at the Ministry of the Attorney General of Ontario. My career as a lawyer has been heavily focused on human rights law, statutory interpretation and administrative law generally. I've acted as a consultant to the chair of the then board of inquiry under the code, volunteered as an adviser on equity issues with the Law Society of Upper Canada, and regularly published law journal articles on human rights legislation in section 15 of the charter. I have given numerous presentations on human rights law at continuing legal education sessions hosted by the Law Society of Upper Canada and the Ontario Bar Association, and I've published two editions of legal texts based on the code, so I'm quite well versed in the law. I'm also very familiar with the legal milieu in which tribunal members must function and with the tribunal's obligations and responsibilities.

I'd like to highlight another important aspect of what I bring to the tribunal, and that is the variety of my experience as it relates to areas of our public life in which the code has influence. I've worked in the public sector, specifically the Ontario government, as well as the private sector. I've been both a manager and an employee. I've been a service provider and a consumer of services. As both an employer and service provider, and an employee and service consumer, I've been involved in health services, education, policing, government administrative agencies and the provision of legal services.

My volunteer experience has been somewhat wider than that. I've been interested in human rights throughout

my varied working and volunteer life, and the result of this experience is that I have some insight into human rights issues from both the applicant and respondent point of view. I think I can bring that insight to bear in disputes that arise under the code, as to how our rights and obligations can be honoured and integrated in a practical way into our daily business, and competing interests can be balanced.

The core of human rights is inclusion and respect for human dignity. The issues are rarely simple, but as a goal, the achievement of an inclusive society is worth all the dedication and hard work we can muster. This is an exciting and dynamic time for the tribunal and I'm committed to doing my part to ensure that everyone appearing before it—applicants and respondents—respects it for its accessibility, fairness, transparency, timeliness and knowledge of the issues.

I'm committed to the tribunal's core values and I welcome the opportunity to become a member. I'll leave my comments there and I'm open to any questions you might have.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin this morning's questions with the official opposition. Mr. Hillier?

Mr. Randy Hillier: Good morning. Thanks for being here. A few questions. First, this position, of course, is a full-time position, and you're presently employed. Are you expecting to stay with your present—

Ms. Judith Keene: No, I'll be leaving and joining full-time.

Mr. Randy Hillier: How did you hear about this appointment?

Ms. Judith Keene: You know, that's a poser. Let's see. I saw the advertisement, obviously. Did I hear about it even before then? Possibly. The main thing, I guess, is that I saw the advertisement.

Mr. Randy Hillier: Are you a member of any political party or have you made any donations to political parties?

Ms. Judith Keene: I'm only a regular donor to charities, and I'm not a member of a political party.

Mr. Randy Hillier: Some political parties might think we need charity, but—no, I'm just being—

Ms. Judith Keene: You had me going there for a minute.

Mr. Randy Hillier: The Human Rights Tribunal has been in the press significantly a lot lately, not necessarily just the Ontario one, but throughout the country. We've seen a lot of controversy in the media surrounding human rights and the increasing encroachment of human rights tribunals and commissions into freedom of expression. There have been a couple of high-profile cases. What's your view on the role of human rights tribunals and the censorship or suppression of freedom of expression?

0910

Ms. Judith Keene: The role of human rights tribunals is to adjudicate disputes that have to do with the legislation that's in front of them, and you have to focus closely on the legislation. Very little of our Ontario code

deals with anything that could be referred to as freedom of expression, but there are some sections that deal with that. As with everything else, I think you've just got to apply the law to the facts before you, you've got to listen carefully to the facts before you, and you've got to balance difficult competing interests.

Mr. Randy Hillier: When I hear the term "balancing competing interests," there are always people who have different interests. It doesn't mean that one interest is greater or less than another, it doesn't mean that one interest can interfere with another, so sometimes they don't need to be balanced.

You mentioned there's little in the legislation for the Human Rights Tribunal to interfere or suppress freedom of expression, but we have seen cases and disputes before it where people have been offended by other people's expressions and have brought those cases forward. In your view, do you see that as something that we should prevent from happening, to prevent these cases—I would say, often, beyond the legislative view of the Human Rights Tribunal—from even advancing to it, like the Maclean's case recently?

Ms. Judith Keene: I think we'd be in serious difficulty if we started, as it were, censoring people's right to bring a claim. The right to bring a claim is not the right to have your views vindicated, but this is part of a democratic society, part of our justice system, and everyone has a right to bring claims before the courts and before tribunals.

Mr. Randy Hillier: Unfortunately, there is no compensation for lost time for the people who have had a claim brought against them and who have been found not guilty, if we might use that term.

To me, human rights are the most fundamental and most important aspects that our system must protect. Our freedoms, due process, natural justice—all of these are very important. I'm wondering, in your view, do you think the human rights tribunals are the best place to adjudicate these disputes; or that, in my view, because they're so important, we should use the full weight of the justice system and put it in the courts, not the quasi-courts, to find resolution with disputes? What's your view on where human rights should be ultimately protected and defended?

Ms. Judith Keene: I think it's important to remember that administrative tribunals are very much a part of the justice system, that—I hope and trust and see—appointees are chosen carefully, and that our tribunals really have a very good reputation for fairness and for expertise. So that's a part of the answer to that one.

But part of the reason why administrative tribunals were created in the first place is accessibility. You can't get away from the fact that courts cost a great deal of money, and administrative tribunals, by contrast, are less costly to us and more far-reaching. And accessibility in another way; it's not just monetary. Where you have a more informal procedure, I think, is a big part of accessibility, and human rights law is really too important, to me, to be inaccessible.

Mr. Randy Hillier: I agree; it should not be inaccessible. But we also have seen the case where it has come to be abused. It is so accessible for some people that they have lodged multiple and many actions through the human rights tribunals at, again, no cost to themselves but at significant costs to the ones that they are disputing.

Ms. Judith Keene: Do you know, I haven't seen that in looking at the decisions.

Mr. Randy Hillier: I think there's a fellow at the Canadian human rights named Richard Warman who has lodged more than 50% of all complaints, so that one individual comes to mind. When one individual can lodge 50% of all complaints, then we know it is far too accessible for that person, anyway. I would think we would all agree with that.

Ms. Judith Keene: Again, I think that's a different system, and you're not talking about tribunal hearings—50% of tribunal hearings, 50% of decisions. I think when something is contentious or when a lot of people object to someone coming forward with something, it just takes on a bigger—it seems bigger than it is; it seems more frequent than it is. I think that's not quite true; the day-to-day business of administrative tribunals is perfectly unexceptionable cases.

Mr. Randy Hillier: I'll just finish off. I found it interesting that in your earlier response, you said you wouldn't want to censor applications to the tribunals, and I can understand the reasoning there. But I find it interesting that we're prepared to censor freedoms of expression and thoughts, or at least put them through the millstone of our tribunals; we're prepared to censor that end of things but not censor the applications. Thank you very much. Those are all my questions.

M^{me} France Gélinas: Good morning, Ms. Keene. Welcome to Queen's Park. I was interested in the different areas of public life that you have experience with. You mentioned the health care, policing etc. I wanted to know if you have any experience working with First Nations people.

Ms. Judith Keene: Some, but relatively little. It's been largely in a volunteer capacity and some experience in my present work, because some of the clinics I advise deal specifically with aboriginal people.

M^{me} France Gélinas: Okay, and I was interested in knowing your knowledge of northern Ontario.

Ms. Judith Keene: I'm sorry. Specifically? Northern Ontario is a beautiful place. I've been to a number of places in northern Ontario. I have huge respect for the legal clinics that operate in northern Ontario, with the vast distances and so on. I'm not quite sure, though, what you want me to focus on.

M^{me} France Gélinas: If you've heard claims, if you've worked in northern Ontario, if you have experienced the barriers, the difficulties, the differences for residents who live in northern Ontario versus southern Ontario.

Ms. Judith Keene: Well, I have some knowledge of that. It's vicarious. I haven't worked in northern Ontario myself, but what I have heard of and taken in is the challenges of living in northern Ontario, which include things that so often, in the southern part of the province, we take completely for granted. My present office, for example, does services by Internet, which is all very lovely, and I'm very proud of what we do, but the fact is, if you can't get Internet service, if it's out—and sometimes that's the case in the north. You can't depend on things the way you can in the south, that sort of thing, some sorts of infrastructure which just don't extend north. So it would be short-sighted in the extreme to expect that people working in the north will have the same supports as people working in the south, and you don't. You have to govern yourself accordingly.

M^{me} France Gélinas: And do you speak French?

Ms. Judith Keene: I don't speak French enough to conduct a hearing, I'm afraid. I try, but conversational is about all I get, and I'm a bit halting at that, I'm sorry to say.

M^{me} France Gélinas: Those were my questions. Thank you.

Mrs. Liz Sandals: Thank you for appearing this morning, Ms. Keene. You've got a wonderful background to work with the tribunal, and best of luck.

Ms. Judith Keene: Thank you very much.

The Chair (Mrs. Julia Munro): That concludes the questions from members of the committee. I want to thank you for coming here today; we appreciate the time you've taken.

I'd now like to deal with concurrences.

We will now consider the intended appointment of Judith Keene, intended appointee as member and vice-chair of the Human Rights Tribunal of Ontario.

Mrs. Liz Sandals: I move concurrence in the appointment of Judith Keene as a member and vice-chair of the Human Rights Tribunal of Ontario.

The Chair (Mrs. Julia Munro): Concurrence in the appointment has been moved by Ms. Sandals. Any discussion?

Mr. Randy Hillier: I would ask for a deferral.

The Chair (Mrs. Julia Munro): Okay. A deferral has been asked for, so we will then move on.

Mr. Michael A. Brown: Do we need to ask for a recorded vote now?

The Chair (Mrs. Julia Munro): Either way.

Mr. Michael A. Brown: We're asking.

The Chair (Mrs. Julia Munro): Okay. We will defer the vote, then. This concludes our business on intended appointments. We will now proceed into closed session, so I'm going to take a five-minute recess while we allow people to get organized for the next section of our meeting.

The committee continued in closed session at 0919.

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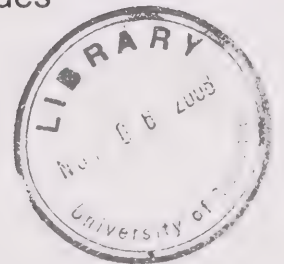
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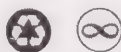
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 28 October 2008

Mardi 28 octobre 2008

The committee met at 0900 in room 228.

INTENDED APPOINTMENTS

The Vice-Chair (Ms. Lisa MacLeod): Welcome, committee. Good morning. Our first order of business is the deferred determination of the intended appointment of Judith Keene as member and vice-chair, Human Rights Tribunal of Ontario. Concurrence in the intended appointment of Ms. Keene was previously moved by Mrs. Sandals. At the request of Mr. Hillier, the committee's determination on the intended appointment of Ms. Keene was deferred until today's meeting.

Concurrence in the appointment was previously moved, as I indicated. Any discussion?

Mr. Michael A. Brown: Recorded vote.

The Vice-Chair (Ms. Lisa MacLeod): If not, I'll call the question. I would remind members that a recorded vote was already previously requested and again today.

Ayes

Brown, Flynn, Ramsay, Sandals, Sousa.

Nays

Hillier.

The Vice Chair (Ms. Lisa MacLeod): The motion is carried.

SUBCOMMITTEE REPORT

The Vice-Chair (Ms. Lisa MacLeod): Our second order of business this morning is the report of the subcommittee on committee business dated Thursday, October 23, 2008.

Mrs. Liz Sandals: I move adoption of the report of the subcommittee dated Thursday, October 23, 2008.

The Vice-Chair (Ms. Lisa MacLeod): Mrs. Sandals has moved adoption of the report. Is there any discussion? If not, all in favour? Thank you. The motion is carried.

INTENDED APPOINTMENTS

STEPHANIE COYLES

Review of intended appointment, selected by third party: Stephanie Coyles, intended appointee as member, Toronto Central Local Health Integration Network.

The Vice-Chair (Ms. Lisa MacLeod): We will now proceed to review of intended appointments.

Our first review this morning is with Stephanie Coyles, intended appointee as member, Toronto Central Local Health Integration Network. You may come forward. As you may be aware, you have the opportunity, should you choose to do so, to make an initial statement. Subsequent to that, there are questions from members of the committee.

We will commence the questioning today with the third party. Each party will have 10 minutes allocated for questions and we will go in rotation. As indicated, the third party will start with questioning. As is also the practice of the committee, any time you take in your statement will be deducted from the time allocated to the government party. Welcome.

Ms. Stephanie Coyles: Wonderful. Thank you. Good morning. I did think I would spend just a little bit of time describing myself. My name is Stephanie Coyles, and I'm currently senior vice-president and chief of strategy and knowledge for Loyalty One, the company that, among other things, brings you the little blue Air Miles loyalty card. So, with that, you might be scratching your head and thinking, "What are you doing here?" So let me try and describe it.

It truly is my pleasure to be with you and an honour to be considered for an appointment to the board of Toronto Central LHIN. You might ask, why did the chair of the board approach me to join the Toronto Central LHIN? What does being the head of strategy for a loyalty company have to do with tackling the critical issues facing health care today? Well, he explained it to me, and I am quite hopeful that I can bring that level of support to the board based on his interest, given the experience that I gained prior to my current role, which I took as of August.

Prior to my current role, I was a principal, a partner in a consulting company called McKinsey and Co. I worked for that management consulting company for 18 years, eight of which I was a partner there. During that time and for the last four years of that time, I led our health care practice in Canada. I worked with a breadth of clients, including helping Canada Health Infoway think through their strategy on e-health and designed what that should look like for the next five years, working with Alan Hudson and Hugh MacLeod at the time on wait times strategy. Also, I supported Helen Stevenson in some of

the work that we we did around generic drug pricing and the evolution there—so a number of different pieces.

In addition, last fall, I actually did a pro bono effort for the Toronto LHIN, because it's a tremendous passion for me, the health care space. That's how I got to know the board. Then, when the chair realized I was no longer in conflict because I had moved outside of the consulting realm, he reached out and said, "It's such an interesting set of background that you might be able to bring to the board, bringing that strategic consulting side of the equation and health care experience in Canada and abroad. Would you come join our board? Given that what we think we need to do over the next period of time is really look at our strategy, it would be a nice complement."

So I'm honoured to be considered. Health care reform is something that I'm highly passionate about, and I look forward to being able to be of service.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much, Ms. Coyles. We will now commence with the questioning from the third party.

M^{me} France Gélinas: Thank you very much, and welcome to Queen's Park. A couple of quick questions, the first one being—you realize that as a member of the LHIN, you will have some very important decisions to make that will have an impact on the health care system and people in your LHIN boundaries for years to come. Right now, the hospitals are signing their accountability agreements with the LHIN. You are familiar with this?

Ms. Stephanie Coyles: Absolutely.

M^{me} France Gélinas: Part of what the hospital has to do is make sure that they put forward a balanced budget. So the amount of resources is known and is fixed, but the amount of expenses sometimes can vary widely. Some of the hospitals are facing tough decisions, having a hard time balancing their books. So some of them have looked at decisions—and I will put a few of them in front of you just to see what you will do, because you will have to make these decisions.

A hospital cannot balance their books, so they decide to divest of their outpatient physiotherapy. Basically, the outpatient physiotherapy offers physiotherapy services to all kinds of people who need them. People don't have to pay because it's a service that is provided in the hospital. In order to justify their decision, the hospital says, "Well, on one side we have to balance the books and divesting of physiotherapy services will save us a million dollars"—or whatever the amount—"which will allow us to balance the books and stay within our accountability agreement. Services won't be cut back because there is a huge, private, for-profit physiotherapy clinic across the street from the hospital so people won't have to travel any further. It's not going to be any different. It's not going to be a cut in service."

Would you approve their restructuring plan to meet their budget?

Ms. Stephanie Coyles: The first thing I would do is, with the board, work with that hospital to understand opportunities they might have to actually manage down

their costs. Some of the experience that I have garnered over the last four years has been around hospital and operational efficiencies, so I would bring a bias that would start there first before we actually looked at cutting services.

The second thing on services is, you need to be able to step back as a LHIN and make sure that the full breadth of service is provided, which would mean that if that was a set of capacity that was funded by government that was accessible to all, we would need to make sure that there was another source of capacity that was accessible to all and that was available. It's not sufficient to say, "They can go purchase that across the street." We would need to look at what the demand is and where they could meet that before you would make any decision along the lines of what you describe.

I would start first by saying, "Gosh, do we need to do that? Second, I would look at total capacity and make sure that you weren't eliminating capacity that was needed. Then, third, it would be how you do it appropriately."

0910

M^{me} France Gélinas: The second example that I would like to put forward to you is that more and more hospitals are looking at contracting out housekeeping services. You see it in new hospitals built under P3 or alternative financing and procurement. For years, those employees were employees of hospitals in Ontario; now more and more hospitals are contracting it out to housekeeping services that come into the hospital and do the cleaning.

Here again, if a hospital was to present to you a change in their operation that would show going to outsourcing for housekeeping services, how would you handle this?

Ms. Stephanie Coyles: That one is more straightforward, I think, than the first example. You need to look at the contract and say, "What's the benefit from outsourcing? Are we going to improve service levels and lower costs, which will allow us to reinvest those dollars in providing services back?" I would much prefer that was an option that they were bringing to the table to balance the budget, rather than one in which you were cutting back services. I recognize that, if done properly, it can be structured so that it is a win-win: It's a win to providing better services back to health care delivery and allowing you to manage your costs. But it needs to be done properly, so that would be the way that I would approach that one on the board.

M^{me} France Gélinas: Just for your information, with the outbreak of C. difficile in our different hospitals and examples in other jurisdictions, there is a clear cause-and-effect link between hospitals that have gone the way of outsourcing their housekeeping and the outbreaks of C. difficile in those establishments, to the point where people who have done this before us are actually reversing those decisions and realizing that although it was well managed, although they thought they were getting value for their money, they end up paying so much in treating

people with hospital-acquired infections that, at the end of the day, it was not worth going at it.

Ms. Stephanie Coyles: Absolutely. That's why I started with the statement that you need to understand what service level you're going to be getting and how you ensure that you maintain the level of quality that you need. I absolutely agree with you on that statement.

M^{me} France Gélinas: My third and last question has to do with alternative financing and procurement, a term that describes P3s, which basically are public-private partnerships for building hospitals. In those, there is a grey line as to what constitutes client services, health care services and auxiliary services. Most people would agree that snow plowing a parking lot has very little to do with health care. Other people will tell you that house-keeping has little to do with health care. Other people will tell you that portering clients from the X-ray department back to their beds or to their rooms has little to do with health care.

I would like your view as to where you draw the grey line. In a hospital setting, what is part of patient care and what isn't?

Ms. Stephanie Coyles: That's a great question. I would look to my colleagues on the board to help me with that question, because I'm not sure my experience that I bring to the table is—I think I need to be educated on that side of the equation. That said, I'm a quick learner, and that's part of the objective. I think what I would do is continually go back to those principles of asking, "What does it mean? What's the impact on the front line, both for doctors, nurses, as well as the patient? What are the metrics, measurements and controls that we're putting in place to make sure that this service that we're achieving is at the level that we want to achieve whenever we start to look at the set of services within a hospital?"

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much, Madam Gélinas and Ms. Coyles. We will now proceed with questions and comments from the governing party.

Mrs. Liz Sandals: Ms. Coyles, we really appreciate your coming forward to testify this morning. Clearly, you've got some wonderful experience in your previous role consulting in health, and I'm sure that that will be a great asset to the LHIN.

The Vice-Chair (Ms. Lisa MacLeod): We will now conclude with the official opposition.

Mr. Randy Hillier: I'll be very short and brief. Thank you very much for being here today. I have no questions. It's nice to see somebody come before the committee who is well qualified. We'll be supporting your appointment.

The Vice-Chair (Ms. Lisa MacLeod): That concludes the time allocated. Thank you very much, and you may step down.

ROBERT LAWLER

Review of intended appointment, selected by third party: Robert Lawler, intended appointee as member,

Hamilton Niagara Haldimand Brant Local Health Integration Network.

The Vice-Chair (Ms. Lisa MacLeod): Our second and final interview is Robert Lawler, intended appointee as member, Hamilton Niagara Haldimand Brant Local Health Integration Network. You may come forward.

As you may be aware, you have an opportunity, should you choose to do so, to make an initial statement. Subsequent to that, there will be questions from members of the committee. We will commence questioning with the government party members. Each party will have 10 minutes allocated for questions, and we will go in rotation. As is also the practice of the committee, if you make a statement, your time will be deducted from the time allocated to the government party. Welcome, and you may begin.

Mr. Robert Lawler: I do have a statement to present, although I think you probably have most of it in front of you. As was mentioned, my name is Bob Lawler. I'm a resident of the city of St. Catharines, in the region of Niagara. I'm here to put my name forward for possible appointment to the LHIN. I feel I meet the criteria needed, based on my education, experience and community involvement.

Education: I graduated in business administration from Ryerson University. I have an accounting designation from the certified accountants' association. I have a diploma in health administration from the Canadian Hospital Association. I was a certified health executive from the Canadian College of Health Service Executives. Not that it's related, but I am also a certified financial planner. That was my second career.

Experience: I started working for the St. Catharines General Hospital as chief accountant and progressively assumed more responsibility. I was president and CEO from 1993 to 2000. At the same time, I was also executive director of the Niagara-on-the-Lake Hospital from 1995 to 2000. I was also the interim executive director for Hospice Niagara in the fall of 2007, until a new executive director could be found.

I'm currently the executive director of Credit Counseling of Regional Niagara, which is a non-profit registered charity that assists people in financial crises. This is a position I have held since 2000. I was also involved with the Ontario Hospital Association. I was on their finance committee and on the human resources committee. I was also on provincial negotiations with the SEIU for a number of years for the OHA.

Community involvement: Currently I'm chair of Community Care, which is the local food bank. I'm also a member of the Hotel Dieu Shaver Hospital in Niagara. I'm treasurer of the Rotary Club of St. Catharines. I am past director of Hospice Niagara, past chair of VON Niagara, past director of Ina Grafton Gage Nursing Home and past director of United Way of St. Catharines.

I'm currently a member of the federal Liberal Party, and I may or may not be a member of the provincial Liberal Party—I'm not sure if I've paid my dues or not.

In summary, I feel I have the education, experience and desire to contribute to the local LHIN.

The Vice-Chair (Ms. Lisa MacLeod): We'll start with questions and comments from the governing party.

Mrs. Liz Sandals: Thank you very much for appearing before us this morning. We really appreciate your coming in. I note your background in accounting and health administration, and when we listen to your volunteer career, you obviously have a huge understanding of the community as well. We wish you well, and I'm sure you'll be a great asset to the board of the LHIN.

The Vice-Chair (Ms. Lisa MacLeod): We'll now proceed with questions and comments from the official opposition.

Mr. Randy Hillier: Thank you very much for being here. I have no questions at all.

0920

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much, Mr. Hillier. We will now proceed with our final comments from Ms. Gélinas of the NDP.

M^{me} France Gélinas: Welcome to Queen's Park, Mr. Lawler.

Mr. Robert Lawler: Thank you.

M^{me} France Gélinas: I have a couple of questions for you. One of the first ones is, what are your values or views regarding private for-profit health care?

Mr. Robert Lawler: I support the current publicly funded system. I guess I go back to my background, where you just have finite finances and sort of unlimited demands on the system. I wouldn't like to see privatization, but on the other hand, I think at some point we have to look at how we're delivering health care. We must do things smarter with the same resources. I don't know if that addresses your comments.

M^{me} France Gélinas: Yes, it does, to a certain extent. I saw from your resumé in the information that we have in front of us, and some of what you've shared with us this morning, that a lot of your experience in health care is with hospitals and what we call big institutions. Do you have any work experience working in the community side of the health care sector?

Mr. Robert Lawler: I was on the board of Hospice Niagara, which is a—just last year it opened up a 10-bed palliative care unit. But before that, it was all outpatient and day-stay. I was a director there. I was also the chair of VON Niagara, and I was also, at one point, a director for VON Ontario. It's really been taken over by the CCAC; they farmed that out. So I think I have a lot of community involvement.

M^{me} France Gélinas: Some LHINs have grappled with the idea of a one-way valve; that is, the hospital sector is such a big part of the LHIN budget when you compare this with the needs in the community sector. I should know, but I don't know exactly—in your LHINs, I think there are three community health centres and quite a few small mental health agencies. But basically, if you compare them dollar-wise, your LHIN is very much dominated by big-budget hospitals, with a very small percentage going to community-based health.

I can see that the demands from the big institutions will be huge and take a lot of your time, energy and effort

just to understand. How do you see this balancing act of small community-based players with small budgets, being just as complicated, with your background being in finance? Understanding that—I will say 90%, but I'm not sure this number is exact—a very large percentage of your budget is going to a few large institutions, how do you see this tug-of-war between the two?

Mr. Robert Lawler: I would agree with you that I think the hospitals are the big boys in the system. You're right: I would think 90% is probably an accurate figure.

I have talked to small agencies in my other life. They always felt that the hospitals got the lion's share of everything. But you're right: There has to be some kind of a balancing and some kind of a way of protecting the resources that are allocated to them.

I would think, over time, the idea is to really move people out of the costly hospitals into other areas. I think there should be a shift and a focus into more resources into that, to have the resources in the community that would allow the hospitals to move patients out, like ALC patients and so on and so forth.

M^{me} France Gélinas: I think you were in the room when I gave the example of a hospital having difficulty balancing their budget—

Mr. Robert Lawler: Yes.

M^{me} France Gélinas:—going to the LHIN, and wanting to sign an accountability agreement that would include divesting of physiotherapy, one of the reasons being that there is, in their neighbourhood, a for-profit private physiotherapy clinic. How would you handle such a request from a hospital coming to you as a member of the LHIN?

Mr. Robert Lawler: Based on your—it was the hospital, and there was a private clinic across the road. Is that correct?

M^{me} France Gélinas: That's correct.

Mr. Robert Lawler: I would not support that. I would support it if there was a public clinic down the road, or another hospital within a reasonable distance, and they said, "Look, we're going to reduce our services, but those services are available," or if there was some trade-off between the two organizations, I would support that.

M^{me} France Gélinas: Very good. I think you were also in the room when I asked—

Mr. Robert Lawler: About the housekeeping?

M^{me} France Gélinas: No, the one about where you draw the line as to what constitutes services that enhance patient care versus services that are not patient-care-related. My example was that plowing the parking lot of a hospital—most people wouldn't think of this as patient-care-related. But as you start looking into housekeeping, portering, food services, where would you draw that line as to what is part of the health care services and what is not?

Mr. Robert Lawler: I think anything that comes into direct contact with a patient is patient services. You're right to some extent: the housekeeping, because they're interacting with the client, they're doing the sterilization of the room and cleaning of the room; but laundry, for

example—it doesn't matter if the sheets are washed in St. Catharines or Toronto—I wouldn't consider that direct patient care, and that has been to a large extent sort of farmed out. Even lab to some extent: The lab tests don't need to be done on-site. Anything that's done on-site and in interaction with the patient I would consider, to some extent, patient care.

M^{me} France Gélinas: Very good. Thank you.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. That concludes the time allocated. We appreciate your standing today here, Mr. Lawler. You may step down.

Mr. Robert Lawler: Thank you.

The Vice-Chair (Ms. Lisa MacLeod): Colleagues, we may now proceed to deal with concurrences. We will first consider the intended appointment of Stephanie Coyles, intended appointee as member, Toronto Central Local Health Integration Network.

Mrs. Liz Sandals: I move concurrence in the appointment of Stephanie Coyles as a member of the Toronto Central Local Health Integration Network.

The Vice-Chair (Ms. Lisa MacLeod): Concurrence in the appointment has been moved by Mrs. Sandals. Any discussion? If not, all in favour? All opposed? Congratulations.

We will now consider the intended appointment of Robert Lawler, intended appointee as member, Hamilton Niagara Haldimand Brant Local Health Integration Network.

Mrs. Liz Sandals: I move concurrence in the appointment of Robert Lawler as member of the Hamilton Niagara Haldimand Brant Local Health Integration Network.

The Vice-Chair (Ms. Lisa MacLeod): Concurrence in the appointment has been moved by Mrs. Sandals. Any discussion? Seeing none, all in favour? Motion carried.

That concludes our business on intended appointees. Any other business? Seeing none, the meeting is adjourned until 9 a.m. on Tuesday, November 4, in committee room 228, when we will resume our agency review of Infrastructure Ontario. Have a wonderful day.

The committee adjourned at 0926.

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Standing Committee on Government Agencies

Agency review:

Ontario Infrastructure Projects
Corp. (Infrastructure Ontario)

Comité permanent des organismes gouvernementaux

Examen des organismes
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 4 November 2008

Mardi 4 novembre 2008

The committee met at 0904 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mrs. Julia Munro): Good morning, and welcome to the Standing Committee on Government Agencies. This morning, our first order of business is the report of the subcommittee on committee business dated Thursday, October 30. I'm looking for someone to move its adoption.

Mrs. Maria Van Bommel: I move adoption of the report.

The Chair (Mrs. Julia Munro): Thank you. Any discussion? All in favour? The motion is carried.

AGENCY REVIEW

ONTARIO INFRASTRUCTURE PROJECTS
CORP. (INFRASTRUCTURE ONTARIO)

The Chair (Mrs. Julia Munro): We then have, as our second order of business, the resumption of our agency reviews. We are very pleased to have with us again officials from Infrastructure Ontario. Infrastructure Ontario has accepted the committee's invitation to respond to stakeholder presentations that were made to the committee in September.

Mr. Ross, I believe? Welcome once again to the committee. As I think you know, you will have up to 10 minutes for an opening statement to respond to stakeholder issues that were raised, followed by five minutes to provide committee members with a short overview of your offer for a fuller briefing on market capacity. Then we'll continue from there.

Mr. David Livingston: Thank you very much, Madam Chair. My name is David Livingston. Mr. Ross could not attend this morning. I'm the president and CEO of Infrastructure Ontario, as you may remember from the last time we were here. With me I have Jim Dougan on my left, who is the executive vice-president of project delivery, and on my right is Bill Ralph, who is the CFO and the senior vice-president in charge of infrastructure lending.

Just because I'm sure you never have the opportunity for some prepared remarks at the beginning of these things, I thought I would offer a couple, if you will bear with me.

Before I get into some of the specific items that were raised by stakeholders back on September 17, I'd like to reiterate something we said last time we were here, and that is that Infrastructure Ontario was created to deliver projects on time and on budget, to achieve value for money, and to protect the public interest.

I think there have been statements made that suggest we're being set up for anything else, and I think that's inaccurate. All of us—the staff, the board—work to the highest ethical standards to protect the public interest and to make a positive difference in the lives of all Ontarians. In fact, I dare say you'll not find a more dedicated group of individuals anywhere who are working harder to provide all of us—our families, our friends, our neighbours—access to the kind of health care services that our hospitals will deliver or the kind of legal services that the courts will deliver.

I'd like to now respond to some of the comments made regarding accountability and transparency.

Infrastructure Ontario has in place some of the most transparent procurement processes in the province. For all of our projects, we disclose the names of all the short-listed bidders, the name of the winning bidder and the total contract price of the winning bidder. In addition, in all of our project contracts, we publish value-for-money reports, and requests for proposals for each infrastructure project are posted on our website. All of our projects are open to an independent third party review by the Auditor General's office.

I know that some groups like to make comparisons between what we do and previous P3 models that were developed and used in Ontario. However, unlike those other models, AFP is guided by the Building a Better Tomorrow framework, which outlines five key principles, including transparency, value for money, public ownership and public control, and that the public interest is paramount.

It's important to understand what these principles mean. They mean that public health care is protected, all the hospitals built using AFP are publicly owned, publicly operated and publicly accountable, and that the private sector never touches the patient. It means that the private sector is contractually obligated to deliver hospitals on time and on budget. It means that taxpayers are protected from cost overruns, and the private sector will be penalized if a project is delivered late. It means that key project documents are posted online. It means that

AFP will only be used to deliver an infrastructure project if value for money can be demonstrated.

0910

We want to make sure that we are using taxpayers' money wisely as we build. That's why we've gone to experts in this field to make sure that there is real value for money for taxpayers and that more risks are pushed onto the private sector and not the public. It is the private sector that delivers construction expertise and risk management, while the public sector continues to own and control health care services.

There are a number of other items that were raised when we last met. I want to take a moment to clarify Infrastructure Ontario's mandate and how projects are assigned to us.

It is the government that determines what projects, when and where, that we do. We simply manage to deliver these projects once they have been assigned to us. Most of our current projects are in the health care and justice sectors. Should the government wish us to execute projects in other sectors, it is a decision that they will make, not Infrastructure Ontario.

There's also a fair bit of interest regarding value for money. I'd like to take a moment to talk about that a little bit further. Value for money is determined by directly comparing the estimated costs of delivering a project under traditional delivery methods, versus the cost of delivering it under alternative financing and procurement, AFP. The cost difference is the estimated value for money. On each of our projects, external advisers are engaged throughout the value-for-money process to oversee our methodology and risk quantification. A third party chartered accounting firm then completes the value-for-money assessment of the project and reviews the report. They will then sign off on the accuracy and appropriateness of the analysis.

In addition to this, we have undertaken other steps to ensure that we have developed a comprehensive and rigorous value-for-money methodology. Earlier this year, we asked Ontario's internal auditor to review a number of our business processes. We are very pleased to say that one of the key findings was that our value-for-money methodology was sound.

I'd also like to note that the government of Canada's public-private partnership screening guidelines list Infrastructure Ontario's value-for-money assessment guide, which is available on our website, as its preferred tool for determining value for money.

I know there were also questions raised regarding staff transfers on our design, build, finance and maintain projects. I want to assure the committee that Infrastructure Ontario's mandate is to build quality infrastructure on time and on budget, not change the terms that are set out in collective bargaining agreements. In fact, we ensure that the terms and conditions in collective bargaining agreements of transferred public employees are honoured in all cases. Whatever terms and conditions have been established as part of the collective bargaining agreement, we will ensure that, substantively, those are re-

spected. That means that whatever successor rights or benefit provisions exist in the current agreement will be honoured.

I would also like to clarify that only those employees who provided hard facilities maintenance services may be affected. Examples of hard facilities maintenance services include maintaining the elevator, electrical and ventilation services, moving, security, parking, grounds maintenance—that kind of thing. Examples of services that will not be included in our hospital projects are laundry-linen services, portering, housekeeping, waste services, medical equipment maintenance and patient food services.

The government's commitment here is firm. Hospitals will continue to be publicly owned, publicly controlled, publicly accountable and built with a transparent process, while holding the public interest paramount.

I would just like to finish off my remarks by addressing something that is surely top of mind for all of us, and perhaps you, and that's the state of the financial markets today. Over the last few weeks, we have continued to hit important milestones that indicate significant progress for our program. We've been releasing the RFPs for projects such as the Windsor Regional Hospital and the Toronto South Detention Centre. We have celebrated the opening of renovated and expanded facilities at the Trillium Health Centre in Mississauga, west of Toronto. We've reached financial close on the Woodstock General Hospital project, which is a significant DBFM that was closed in the middle of all this turmoil, which shows that projects can get done. We continue to successfully deliver on our mandate of making projects happen on time and on budget.

On the loan side of Infrastructure Ontario, we are in an excellent position to provide support and assistance to projects that are priorities at the municipal level and face their own challenges as a result of current market conditions. The numbers speak for themselves, so it's worth noting that we've surpassed our full-year targets and already provide one of the largest programs of its kind in North America.

Having said this, I don't want to leave you with the impression that everything will necessarily go as planned. There may be circumstances where we may not be able to reach financial close on a project in the same way as in previous projects. This does not mean that we need to redevelop the AFP program, but that we will continue to monitor the situation closely and deal with issues on a project-by-project basis. The worst time to make fundamental changes to a program is when you're in the depths of whatever difficulties are being created. We will re-examine this once markets return to some semblance of normalcy, and in the meantime we will deal with projects on a case-by-case basis.

Despite these challenging times, I want to assure the committee that all of us at Infrastructure Ontario remain committed to getting things done and we will continue to prove the government wise for investing their support in our collective efforts.

Today, at the beginning of my remarks, there were a number of issues raised by stakeholders and we've tried to address these items that appear to be of most concern. However, I want to assure you all that we will continue to work with stakeholders, as we have done regularly over the past three years, to constantly address their issues on an ongoing basis. This is not just a one-time thing we do when asked; we consider it a fundamental part of our business.

Thank you for your time and attention, and I'll ask Jim to take a few moments to speak to a few other items, including market capacity.

Mr. Jim Dougan: Thank you, David. I know some stakeholders have raised concerns regarding the level of risk transfer to the private sector on our projects and have indicated that bidders are staying away from them. I would like to highlight for the committee the level of participation that we have seen on our projects to date.

Since 2005, we've had an average of eight bidders respond to requests for qualifications on our build-finance projects, and four bidders—and recently five or six bidders—respond to the request for qualifications on our design, build, finance and maintain projects. Certainly, we are attracting a great deal of interest from the industry on our projects.

I would also note that our projects are quite large. The average capital cost of our projects under construction is over \$200 million. Given this, only a certain number of companies have the ability to bid on these projects, whether they're AFP projects or traditional projects. However, those who are capable of bidding have not only expressed interest in our projects, but are also actively participating in the AFP program. And evidence to this can be seen that we've closed 22 projects and have 22 projects now under construction.

There was also discussion by stakeholders around the project costs and schedules, and the opinion of one stakeholder was that AFP projects would run into the same problems as traditional design-bid-build projects. For our 22 projects under construction, I am pleased to report to the committee that all of them are tracking on time and on budget. In fact, most of the projects are tracking ahead of schedule. A number of these projects have already reached 60%, 70%, 80% and, in some cases, over 90% completion. And as you can see—we circulated the photographs of the projects that are under construction just so you get to see what's actually going on in the field, the bricks and the mortar—this is actually happening.

This report is substantiated by monitoring the key performance indicators on these projects. So it's more than just an opinion; it's actual performance on the site.

Our efforts are being noticed, as evidenced by the headline that we saw last week in the Sudbury Star, which read: "Hospital Work on Time: Builder Says Construction Might Be Completed Early."

With respect to the issue of project bundling, I would like to assure the committee and stakeholders that this is not a priority for Ontario government infrastructure

projects. When it is considered, it is only for potential design and program efficiencies. But ultimately we want to say to smaller firms in Ontario that there are plenty of opportunities through the AFP program and other delivery methods in years to come.

So now I'd like to just touch on the capacity study. We provided a handout at the beginning of the meeting. I think the important thing here is to comment that the capacity issue doesn't just apply to AFP projects; this applies to all projects, no matter what the delivery method is, and really applies right across the country, not only in Ontario.

In 2007, we conducted an analysis of the trends in the construction industry and the possible impact that these trends would have on our projects. We concluded that capacity in the construction market in Ontario would become even more limited and, as such, we would need to carefully manage the flow of projects to the market to preserve a healthy bidding environment and good value for public dollars.

0920

The biggest constraint on market capacity that we saw was the availability of sophisticated trade contractors, primarily mechanical/electrical, project management expertise within these contractors and key skilled trades able to undertake large, complex projects. We also noted constraints in the general contractor community, where there are a limited number of those who are able to handle these types of projects, and although we have been and continue to be successful attracting foreign firms with general contractor capacity to Ontario, these firms still face the constraint of the sophisticated trade contractors and the skilled trades not being available.

Further complicating matters was that, unlike previous points in the construction industry in Ontario, construction was booming all across Canada. As a result, there would be little or no ability for Ontario to draw upon construction resources from other parts of the country. Also significant was the level of construction activity in Ontario, and this activity was not just limited to one or two sectors. In addition to the boom in the residential sector, there were several projects in the commercial and industrial sectors expected to enter the market and, for our projects, this meant that there would be little or no capacity to draw from other sectors.

Another challenge concerned the number of large, complex projects that were expected to come to the market in the next couple of years in the industrial, commercial and institutional sector and the capacity of the industry to bid simultaneously on these types of projects. General contractors and subcontractors already face constraints on resources when preparing bid submissions for large, complex projects. However, of more concern is their lack of capacity to bid on multiple projects of this size and complexity at the same time.

So to help manage construction capacity risk, we recommended that the flow of projects be staged such that there is more gap and less overlap between them. We are also looking to shorten the period between the release

of the request for proposals and financial close in order to free up bidding teams to work on successive projects, and we will continue efforts to standardize our request for proposal documents further, as well as continuing to make the RFP process more consistent and stable.

Thank you, Madam Chair. We'd be pleased to respond to any questions the members may have.

The Chair (Ms. Julia Munro): Thank you very much. We'll begin with Ms. Gélinas.

M^{me} France Gélinas: I get to start. Good morning. Thank you for your presentation. The first issue I want to address is one that the Labourers' International Union of North America presented. The people who were here were actually responsible for their pension fund and they were certainly engaged in infrastructure investing and saw a good fit. A pension fund is looking for long-term investment and they saw that investing in an infrastructure project gives them this 25, 30 years, which is the type of window they're looking at. They saw it as a good fit and an opportunity for them to invest their members' pension into Ontario, because they do have a significant—I think 33,000 members in the GTA alone and 60,000 members in Ontario.

They started to talk about a pension fund being, at the basis, risk-averse. They don't invest in any sort of investment tools that have risk attached to them, so when I questioned them about the whole—and they didn't refer to it as alternative financing and procurement; they saw it as a clear P3. So using their language, when they looked at those P3s, they are there to transfer the risk to the consortia, including the one who puts the money forward.

When I asked them about how you reconcile the fact that your pension fund's number one priority is to avoid risk for the investment of your members versus this linkage they saw between having the opportunity to invest in Infrastructure Ontario's 25-year, 30-year project, they made it clear that the projects were so lucrative that there was no risk to their members, that they would never sign on to a deal where it did not pay enough, and then well above that, to cover any amount of risk that they had to take with the DBFM project. That meant that the Ontario taxpayer was to pay such a big premium for them to assume the risk that even a risk-adverse investor saw those as great deals—nothing but a great deal. If the over-and-above premium for risk was not big enough for them, they would not sign on.

I'm one of those taxpayers and I represent another 100,000 of them in my riding that are not so keen on paying risk premiums to the amount that we're led to believe. How do you reconcile this? That people who invest in those projects see them as so lucrative that there is really no risk involved.

Mr. David Livingston: There are a number of things in there. I guess first and foremost, I think it's fair to say that the reason that Infrastructure Ontario exists is that, historically, there have been many instances, unfortunately, in the province where big projects have gone significantly over time and over budget. To suggest that

there is not a risk in that regard is just incorrect. It certainly happens.

The primary purpose or the primary goal of the Infrastructure Ontario AFP program is to put the accountability for delivering on time and on budget into the hands of the private sector. The reason that we put the financing on their side of the table during the construction period is so that they are incented to deliver to the contract that we have set out.

The equity money that goes into a project—I think the view that this is risk-free is in the eye of the beholder. Certainly, the banks that are lending to these projects, as well, that expect that the equity money is going to get hit before their money gets hit, view that there is risk in it. As we're seeing in the market today, we have banks that are not lending to these projects because of the inherent risks that they see involved. I think it is incorrect to say that there is not risk. I think the weight of evidence in the market would suggest that that's not the case.

I would probably just add that we rely on the competitive process, as Jim said in his remarks. We have several bidders on every project. All of the elements of that bid go into the making for a competitive bid, so it's the cost of construction, the cost of maintenance, the cost of design and the cost of financing. All the bidders are highly incented to sharpen their pencil and make sure that they're delivering value for the taxpayer. All of this gets captured in the value-for-money report that we do at the end that compares it to the traditional way of doing things.

I think it is a view, but the weight of evidence of these projects, the weight of the value-for-money reports that come out of them and the view of everybody else who is involved with the process suggest that there is a lot of risk transfer and that the public is being appropriately rewarded for it.

M^{me} France Gélinas: There were also other people who presented—and I should give you their names, I suppose. They were the Ontario General Contractors Association and the Ottawa Construction Association who presented. They said that a lot of the “on time and on budget” is not that much linked to their taking on the financing; it's really linked—and kudos to you—to the good work that you do upfront to define the project so that people really know. They basically praise the work that has been done by Infrastructure Ontario to really put projects out there that are clear and understood and don't require many changes as the project unfolds.

0930

So here again, there seems to be certainly a body of knowledge that has been developed at Infrastructure Ontario that allows this province to put out really well-understood construction projects, but they didn't see the financing part as having anything to do with delivering on time and on budget. They really saw the capacity that you had developed to really put out clear requests for proposals and the different steps that they explained, but I don't have time to go through them all. How do you reconcile this with your position?

Mr. David Livingston: First of all, we very much appreciate the compliment on behalf of all the people who work hard back at Infrastructure Ontario. Our thanks to the associations for the kind words about project management.

I'd probably answer the question with a question, sort of rhetorically. When the private sector has the financing responsibility on their side of the table during a project, and as the project's going along, say it's a \$200-million project and they're borrowing \$175 million and they're getting towards the end and they're now paying interest at the cost of X hundreds of thousand dollars a day, I think it's fairly obvious that they would be highly incentivized to deliver that project on time—well, actually ahead of time in order to be able to save the money.

So part of what we do with the financing is to incent them to the right behaviours, but the second and more fundamental thing, I think, is that inevitably in a project there are things that happen where there are disputes. We move the responsibility for those things to the bidder side of the table. If the public is financing that project and there's a dispute, there's not really a big cost to the contractor to say, "Well, let's just sit on this for a while until we get the dispute resolved," because it's the public that's now burning up the interest at the rate of hundreds of thousands of dollars a day. With them being accountable for the interest, the desire on their part to just kind of hold things up while we're trying to solve things is not going to happen. It incents the right behaviour to accept responsibility for the problem, fix the problem and move on and get this thing done.

So I would strongly argue that it's not that we don't do good project management. I think there is good project management involved, but the purpose of the financing is to make sure the right incentive is in place and there's the right alignment with the risks, so that they are motivated and directed to do that which they contractually sign up for. So we consider it part of a package that is what creates the value for money, and again, in the value-for-money reports that we publish, all those things are factored in in producing the ultimate value to the taxpayer.

The Chair (Mrs. Julia Munro): Thank you very much. I'd like to move on.

Mr. Kevin Daniel Flynn: A few questions on the issue of risk transfer. People call it "risk transfer," and sometimes you would think that would imply that it was being transferred for free, and in fact that risk is being either bought or sold, depending on what side of the coin you happen to be. How do you constantly ensure in that risk transfer process that the marginal benefits are equaling the marginal cost? How do you know that you're right on the cutting edge of where that risk transfer should be? Do you do an analysis on a monthly basis, on an annual basis, after each project is done?

Mr. Jim Dougan: Actually, each and every project, we go through the risk matrix, because every project is different, has its own unique aspects to it. As David mentioned in his comments, with the experts we have at the table, both internal and external, we make sure we go

through that, and we adjust the risk matrix to suit the profile of every project. That way, we know that we have the right balance going in. We're not just taking something that happened on a previous project and saying, "Well, that'll be good for this one as well."

Mr. Kevin Daniel Flynn: Okay, so as the project reaches completion, you can do an analysis that shows that you've done the right thing, and you can also compare it back to the traditional model, had that hospital been built in the old way of doing things?

Mr. Jim Dougan: That would be the baseline of the value-for-money analysis. We would have the baseline of the traditional delivery. We're just getting to completion on some of our projects, but that's part of our procedure that we put in place, that we'll go through the lessons learned and get a confirmation of the actual performance of the project.

Mr. Kevin Daniel Flynn: Okay. The review of the market capacity led to some projects being reshuffled. I was a major recipient of one of the reshufflings, not necessarily in a good way. In the private sector, if that problem arose, the private sector wouldn't just throw up its hands and say, "You know what? We're just going to have to move these projects back. That's too bad." They may say that's how it appears to be today, but we need someone to come forward and fix that. It seems one of the things you've said is that you're trying to increase the capacity; you're trying to move to a market where there's more capacity.

For the projects that I have in mind, I can still only think of three major contractors that are capable of doing that. One, as I understand it, is a bit of a newcomer to the field or is a blend or a partnership that's been created. Today in Ontario, are there still only three companies that are capable of building a hospital?

Mr. Jim Dougan: No. Working on increasing the capacity, we've seen an entrant from Michigan state that's joint-ventured with an Ontario firm. The firm from Michigan is very experienced. There are actually two firms from Michigan that form part of this joint venture, and they have very extensive experience in health care. They're sizable; they have a balance sheet that enables them to do this type of work.

We're also seeing international players, coming in from Spain and the UK to participate on the projects, that are contractors as a base. Again, they look to joint-venture with smaller local firms to give them the local experience and knowledge to participate in these projects. When I mention that on our DBFM projects—again these are all large projects—we're seeing four, five, even six firms, consortiums, responding to our request for qualifications.

Mr. Kevin Daniel Flynn: Now, did you have those four, five or six bidders in mind when you shifted the projects around?

Mr. Jim Dougan: Yes. We certainly did because the issue, as I touched upon in the comments, gets to be how many you can actually bid of these projects. It's one thing to have it at the general contractor level, but you

also have the trade contractors that are critical. The last time we met, I was explaining the value of mechanical-electrical in a health care project. It's 40% to 50% of the value of a project. There's a capacity issue there, probably more critical than what we have at the general contractor level. They can only take on and bid so many projects at one time. They just don't have the resources to do it.

Mr. Kevin Daniel Flynn: If you go beyond the firms themselves, and you realize that you've reached some sort of a limit in the capacity, you start to look at the process next. You start to look at things that you can do within your own process as far as the timing of the RFPs, how the document flow takes place. Can you advise us of any progress you've made perhaps since we met last or any progress you intend on making in that regard?

Mr. Jim Dougan: Since the last time, we're looking at the flow. We're certainly continuing to refine our requests for proposal. Looking at the market conditions, as David commented, with what's going on in the marketplace now, we're not trying to make a wholesale change, but we do have to make sure that, with our current projects, we adapt appropriately to keep our staging plan moving forward, as currently planned.

Mr. David Livingston: If I could add, I think Jim is being somewhat humble there. We benchmark our time from RFQ, when we first get processes going, to financial close against what's happening in the UK and Australia, where they've done hundreds of these projects. Our start-to-finish times compare very favourably. One of the reasons why we're able to attract foreign contractors to Canada and Ontario versus projects in Spain or Europe is because our processes are faster. They look at this as a way of being able to reduce their bid cost. So we are constantly looking to refine it, but we're refining it from a high standard.

0940

Mr. Kevin Daniel Flynn: The debate over whether AFP is a better way to go—there's a public debate that's raging out there and has been raging for some time. I'm not sure if the public was really engaged in that debate, other than that there are some stakeholders that obviously have expressed their concerns and their opinions as to whether the process is a valid one and one that saves the taxpayers money. How are you changing at Infrastructure Ontario so that you're able to better communicate in a fair and factual way with the public?

Mr. David Livingston: First and foremost, we do—I mean, we say it but we actually do it—engage a lot with all stakeholders. We don't view our task as simply to get the project done. When we are working in a community, we talk to the local construction association in the community, we talk to the stakeholders in the community, we are involved with the board of directors; some of their meetings are in public, some of them are in camera. I would say that we're highly visible. So what we're trying to do through that process is to explain what we do and how we do it. We do some of our own analysis and research on how people are reacting to what's being said.

The kind of feedback that we get suggests that—well, I don't think people will go to bed at night thinking, "Gee, I wonder how AFP is doing in the province today." There are other things to worry about. There is increasingly a sign that people are seeing projects go up, they're seeing them get done, they're seeing it happen on time and on budget, they are hearing it's somehow or other related to this process, they're linking the two together and it's creating a positive reaction.

I think that in the end, the proof is in: Does the project happen? Does it deliver the services that were promised? Does it come in on time and on budget? As increasingly that's happening, people are becoming increasingly convinced that it's the right way to go.

Mr. Kevin Daniel Flynn: Do you have a formal tool for doing it? Is that something you do on a case-by-case basis? Do you have a communiqué that goes out to people in a community where projects are taking place or do you just leave it to some sort of natural process to allow the information to get out to the public by osmosis or something?

Mr. David Livingston: We have kind of a regular approach to how we engage with local stakeholders. We try to replicate that every time, but not every community is the same and the number of stakeholders is not the same in every community. Especially on hospitals, we're working through the hospital board and the hospital corporation. I guess it's a bit of a waffle; it's both. It's not like there's a rigid list and we tick down the list, but there is a kind of standard process on who we should be talking to and how we should be talking to them, and we do that every time.

Mr. Kevin Daniel Flynn: Are you finding any evidence that as the public gets increased knowledge there's increased acceptance of the AFP process?

Mr. David Livingston: I would say so, yes.

Mr. Kevin Daniel Flynn: Something you could quantify?

Mr. David Livingston: Yes, as best as any of these can be quantified. We don't like to spend a lot of money doing—the money that we would spend doing polling or going out and doing research like that we think is better invested in just getting the structures built. So on the basis of the kinds of things that we do or can afford to do, we think we get positive feedback.

The Chair (Mrs. Julia Munro): We must move on.

Ms. Lisa MacLeod: Welcome back to committee. I appreciate your taking the time to give us a follow-up briefing. I'm sure that many of the comments made by the stakeholders were welcome. I appreciate your bringing some solutions here today.

I wanted to talk a little bit about your ICI market and large-complex institutional projects under the market capacity study. Your bullets under "Attracting Foreign Contractors/Players" say that you have an "emphasis on related experience and contractor capacity" and it's "affected by constraints—lack of key trade contractors and skilled trades to undertake large-complex institutional projects."

You may recall that the Ontario General Contractors Association and the Ottawa Construction Association appeared before committee, and they highlighted a major concern among small contractors of projects being bundled: that it reduces bidders and competitions and that it's actually detrimental to their businesses. They also had a concern that large infrastructure projects in the city of Ottawa were not delivered to smaller subcontractors, and I think three in particular—the Montfort Hospital, the Ottawa cancer centre, both in my community of Nepean at Queensway Carleton, and also the Ottawa Hospital. I'm wondering if you could make some comments to their specific concerns that, by going to these larger international firms, they're not actually getting businesses in our smaller communities.

Mr. David Livingston: I'll ask Jim to talk about Ottawa in a second.

At a general level, I think we have about 50 projects on our list of what's been assigned to us, and I think there is one project where we have bundling as part of it. So to suggest that bundling is an ongoing part of our strategy, that's just not the way we do things.

In terms of the use of local trades, especially local contractors, I guess there are a couple of things in play. First of all, this is a very competitive process, and so as a natural step, the bidders, whoever they are, whether they're big Canadian firms or big European firms or whoever, are highly incented to use local trades and local people because, frankly, they're available and it's less expensive to use them than to try to bring in people from other parts of the world. So our experience has been that there is a great use of local trades and local contractors in order to be able to deliver on time and on budget.

I guess the second thing is that where there are concerns about it in particular, there are instances where we have contemplated, in our evaluation process, putting incentives in for the use of local trades and local labour. I think that's also—

Ms. Lisa MacLeod: Could you explain that, then?

Mr. David Livingston: Yes, I'm going to actually get Jim to do that, especially to talk about Ottawa in particular.

Mr. Jim Dougan: Certainly in Ottawa, I'd argue that the projects that you've mentioned are large-complex projects and sort of fitting the type of contractors that are able to bid on those and actually execute the work. For the Montfort Hospital, EllisDon is the contractor; that contract is approaching \$200 million, very sizable. EllisDon has a local office in Ottawa, so they'd consider themselves a local contractor, and all the subcontractors working on the project would be from the local community.

In terms of the Ottawa Hospital and Queensway Carleton, PCL is the contractor on those projects. Again, they've had a local office for a very long period of time and would consider themselves a local contractor, and local subcontractors are engaged fully in those projects. There were some efficiencies. The Ottawa Hospital and the Queensway Carleton sites were deemed to be one

project because of the interface between the two projects. There are efficiencies in doing it, not just bundling for the sake of bundling, so I think that was the reason why we did that.

Ms. Lisa MacLeod: Okay. So that's the only project, right now, in Ontario where there is bundling?

Mr. Jim Dougan: The only project in Ontario that we have under way right now. As I mentioned in my comments, bundling is not a priority whatsoever in our program. I'd say the only time we'd consider it is if there are design or program efficiencies.

Ms. Lisa MacLeod: And can you speak more to the incentives, why it's an incentive for subcontracting with the subtrades?

Mr. Jim Dougan: It's actually natural in the industry. You're going to have the most competitive pricing if you utilize the local contractors and local labour. To import trades into a community is highly inefficient and very expensive. As David mentioned, on projects where there is more of a high sensitivity—so it would happen naturally, but if there is a high sensitivity—we introduce into our request for qualifications that the proponents submit a plan on how they would utilize local labour and trade contractors and then we'd evaluate them based on that plan, and then that would carry forward into the request for proposals and they'd have to follow through and demonstrate how they would actually execute that plan.

Ms. Lisa MacLeod: That brings me to another question, just for information's sake: So you're not solely lowest-cost compliant when you are awarding a contract; it's also for other qualifications. So this is also built in. Because I think that there is maybe a misperception out there that you award solely on the basis on lowest cost compliance.

0950

Mr. Jim Dougan: No. We do a request for qualifications. We make sure that the firms participating are most qualified, and part of what we think of as a qualification would be how to utilize the local community and the local labour. Then that does apply to the request for proposals as well. In the request for proposal, there are technical points. If it's a DBFM, there are obviously design scoring points and price points that make up the evaluation and the selection.

Ms. Lisa MacLeod: In terms of the Montfort Hospital, you say your substantial completion date will be November 23, 2009? Could you explain that, as well as the Queensway Carleton Hospital's substantial completion date of October 9, 2009? What is "substantial completion date," rather than just solely "completion date"? Is that just building it or are they going to be able to actually see patients?

Mr. Jim Dougan: It's actually a defined term in the industry, "substantial completion," so it's something everybody in the industry is familiar with, and that's when the site or the building is ready for beneficial use of the owner, so the owner, or the hospital in this case, would start moving in. They wouldn't necessarily be

offering clinical services on the substantial completion date, but they would start decanting exercises that they have in moving their operations into the facility.

Ms. Lisa MacLeod: Okay. Just to shift gears a little bit with respect to what we sort of saw yesterday in Ontario, which is the first time in our history that we've become a have-not province: We're seeing right around the world, obviously, that there are economic challenges. I'd just like to know to what degree you see the economic climate easing market capacity constraints to expedite or lower the cost for Ontario AFP projects.

Mr. David Livingston: I think that the capacity could be affected by what happens to the private sector. So as private sector activity slows down, that would increase capacity of sub-trades and general contractors to take on work and that could create some ability on our part to move projects along.

The scope of the program that the government has through AFP and through Infrastructure Ontario has not changed. We continue to want to put projects into the market. I think we're looking more at being driven by what's happening with others.

In terms of cost, where we're going to see the effect of that is in the bids. So the contractors and the subs, as they are bidding these things, are bidding based on the most current view that they have and what costs are going to be. As we said before, it's a competitive process, so if the perception is, as a result of what's happening in the world, that costs will go down, then we'll see that reflected in the bids. I think that we're set up in a way that we can naturally take advantage of whatever opportunities are presented to us.

Ms. Lisa MacLeod: You use the term "on time, on budget," which is something Conservatives love to hear. But I'm wondering, in terms of the Queensway Carleton Hospital, the Montfort Hospital and the other infrastructure projects that you are in charge of right now that have a substantial completion date in 2009, do you expect any of those, as a result of the economic circumstances we're facing, to actually decrease some of your budget costs? Do you think that you might be under budget as a result of the changing times?

Mr. David Livingston: Well, when they bid these things, they bid them to fixed prices. That's—

Ms. Lisa MacLeod: Oh, so it's fixed prices.

Mr. David Livingston: They do; that's to their benefit.

The Chair (Mrs. Julia Munro): Thank you. I'll just take a couple of minutes to go around to each caucus for any further wrap-up questions. We'll go back to Ms. Gélinas.

M^{me} France Gélinas: Okay. The next question I wanted to ask had to do with the freedom of access to information that was done for the North Bay Hospital. I have shown you what we got, which is hundreds of pages of nothing; not one number was there, although you talked about your number one principle being transparency to the public. We also reviewed the PricewaterhouseCoopers value-for-money assessment that they've done for the

North Bay Regional Health Centre project, and basically, they say that the terms of their contract were to look at the traditional delivery approach and how much that would cost versus the alternative financing and procurement, the AFP, how much that would cost. But in their comment, they say they "did not audit"—and I'm reading from the letter—"or attempt to independently verify the accuracy or completeness of the information or assumptions underlying the PSC [public sector comparator] ... " which was provided by you, by Infrastructure Ontario. They went on to say that they also did not have access to do an audit of the final offer, "nor have we audited or reviewed the successful proponent's financial model."

Basically what they're saying is that you gave them the price that you thought the public sector would have cost, you gave them the price as to what the AFP cost, they did the math and it was 8.7% cheaper. To me, this is not transparency, and for most Ontarians, it is not what we call transparency when we get pages and pages—my colleagues from the Liberals were talking about the public being really reluctant toward what you're doing. Part of this is because the transparency is not there, and they don't buy the competitive arguments that you're trying to put across.

It's the same thing when you talk about how what is included will never touch the patient. Well, I'm sorry; right now, we have hospitals that have been built under P3 where portering is included. It may not seem like part of health care to you, but to people who are using those hospital services, it is certainly part of what they consider hospital services and it is now in the hands of the private sector.

My question has to do with how you answer this uneasiness about transparency. Whenever we try to get something out of your agency, we get blank pages. And how, again, do you reconcile your idea that whatever we bundle up, as to what the private sector can deliver in our P3 hospitals, will never touch the patients, when, in reality, there are lots of privately controlled hospital services that are being delivered within the P3 hospitals that have been constructed to date?

Mr. David Livingston: Fortunately or unfortunately, our answer is going to be the same as it was last time on this. I think there are a few points that I would make. The first is that, as we said earlier, we've had the internal auditor review what we do and how we do it, and the internal auditor found our processes to be sound. We have, in all cases, as part of the auditor opinion—part of their job is to look at how we do things relative to how it's done in other jurisdictions, and they, in all cases, find our process to be consistent with what others do.

We mentioned that the federal government, in its own P3 methodology, referenced the Ontario value-for-money approach as being sound. So we think that the weight of evidence is that the way we go about it, the way we think about it, the way we do it is as good as anywhere else in the world, and that all of the independent looks at it say that it does produce value for money.

In terms of why we don't give out the detailed financial information, our concern always is that we are looking to get the best deal for the taxpayer; we want the lowest price. If we start giving out the individual details of the bidding information, our concern is that that will become the floor for every bid thereafter. So both from our point of view and—naturally, from the bidders' points of view, who also look at this as being to their competitive advantage in trying to put the best deal on the table, they don't want the information released.

Contrary to the view that we are doing this to be non-transparent, we believe we're doing it for the right reason, which is that this is what's going to allow us to keep bringing that bar down and keep bringing the financing costs down, and not trying to create an environment where we set a floor in the price and everything starts to get priced off of that. We are driven to deliver value for money and we think the way that we go about it is consistent and it is consistently producing the right results.

The Chair (Mrs. Julia Munro): We must move on. Mrs. Sandals?

Mrs. Liz Sandals: Just by way of comment, having spent a lot of hours in public accounts, when we first started back in 2003, what we were often hearing were construction horror stories about public projects that were not on time and were not on budget. My impression was, to reflect back on some of the earlier comments, that in a large part that was because projects were not well defined to start with, and it left room for a lot of argument later.

1000

Also, as you were talking about risk transfer and financing, you were actually outlining the script for what's going on at Guelph city hall right now, where a contractor has pulled out, or at least the city and the contractor have gotten into a dispute, at about 90% completion, and it's a little bit of a horror show.

However, what I wanted to ask you about is, when you're doing design-build-finance-maintain, I think the public perception is still that when we talk about "maintain," we're talking about sterilizing the autoclave or something like that. My perception of the maintain piece has been more that the contract is going to be awarded to somebody who's going to maintain essentially the building for however many years—25. So the maintain part of it is really, do you put in a high-quality flooring material that's going to last for 25 years, or do you bid saying, "We'll put in a lower-quality flooring material," knowing that you're going to have to replace it after 15 years, and that's what we're talking about with maintain—the actual nuts and bolts, the hard infrastructure. Which of those perceptions is right?

Mr. Jim Dougan: It's maintaining the building. It's all about the integration of the design, the construction and the facilities management right out of the facility, not the operations or anything else, and it's making sure that at the end of the concession, the 30-year term, the building is handed back in proper condition. That's really what we're talking about. As David mentioned in his comments, it's the mechanical systems, the electrical

systems, the elevators, the floors. The fabric of the building is what's being maintained.

Mrs. Liz Sandals: Thank you very much, because that's the thing I find the most confusing: What do we mean by "maintain"? A lot of people seem to think of it in terms of soft services, as opposed to hard infrastructure.

The Chair (Mrs. Julia Munro): Thank you very much. We'll finish up, then, with Ms. MacLeod.

Ms. Lisa MacLeod: Thanks, Madam Chair. I appreciate it.

Again, thank you for answering my previous questions. The only concern that I have at this point in time—I mean, we've talked a lot about the process, the economy and bidding. To go back to my colleague from Nickel Belt and her concerns with respect to transparency, I understand your concerns and I can see it from the other perspective of why you would want to be very cautious of releasing so very many details. At the same time, this is public money. I know a few of the organizations that came in were a bit more radical than maybe I would be comfortable with, supporting their views, and I certainly don't support a moratorium on AFPs. But what I do support is increased access to information when this is public money. I don't know if that's through the Auditor General or if it's from more disclosure from you folks at the end of the year through what the minister will ultimately table.

That's my biggest concern, that these are taxpayer dollars. It's funny, because we make the comment that you want to be on time and on budget. We could always be on time or late and over budget, but we can never be, as you say, under budget. So with taxpayer dollars at stake, is there a way that we could meet the public's right to know with your, I believe, right to control the circumstances in generating these projects and making sure they're built on time and on budget? Is there a compromise that you can think of, or is it something that we might have to put in this report so that we're actually given information that's critical to our communities, but also critical to the people we represent? It's their tax dollars. They are finding out this week that they're a have-not province. Many cities right now are starting their budget processes. People are thinking about money all the time. How do we let them know that we're spending their money the best way possible?

Mr. David Livingston: I'm going to ask Bill in a second to talk about what goes into our year-end report because we do publish a financial statement that is a public document. We talk about what we don't publish, but maybe we could talk about what we do publish.

In every project that we have, we publish the project agreement in all its detail. We do delete specific references for the reasons you mentioned, where we believe there's a competitive advantage to the province in doing so. We publish the total number so that everybody knows what the winning bid was, and we publish a value-for-money report.

We would say that there is a high degree of disclosure today around what we do and how we do it. We have

openly asked the internal auditor to come in and look at what we do. They had suggestions, and we acted on those suggestions. The Auditor General has the right to come in any time, and presumably they will some day. So it is an open process trying to preserve that important element of making sure that people are incented to beat bids and do better next time, not to use it as a floor.

But it is worth just talking for a minute about what we do put in our records other than what we publish on a project-by-project basis.

Mr. Bill Ralph: I think the only comment I would add to that is that the annual report we publish and which is tabled in the Legislature includes contents that are stipulated by Management Board of Cabinet. So it's not what we want to put in the report; it's what consistently, across the government, is included in annual reports of crown agencies. That includes things like total project expenses which mirror project recoveries from the ministries, which recoveries are then supported through the estimates process for each individual project. I think if you put all that together, at least at the higher level, there's a fair degree of disclosure.

Ms. Lisa MacLeod: But you talk about total project expenses, so I would find out, for example, the construction cost for the Montfort Hospital in total cost, not sort of where you may or may not have a cost overrun.

I think that's probably what my colleague is looking at, her concerns in terms of cost overruns, and if that were to occur, as an MPP, I think she would expect the right to know that information so that we can do our jobs in the Legislature that much more effectively.

So I appreciate your disclosure of what you are disclosing. I think, though, what we're looking for is a

little bit more detail in terms of what you can disclose, whether it's labour costs, material costs, land costs, and that would satisfy a lot of the questions. I think it would eliminate a lot of the ridicule that you would get from the health care coalition or the OFL, the Ontario Federation of Labour, who are quite critical of you, and I by no means share their view on virtually anything, with the exception of being more transparent with public dollars.

I just leave that with you. We'll have our opportunity, each of us, to make recommendations to the minister and the Legislature in the coming days, but I see no reason that you couldn't think, before that's tabled, on different mechanisms that would actually satisfy some of your critics.

Mr. David Livingstön: Can I just make one comment? As I say, we do publish the total bid that's put out by the winning bidder. The presumption can be that that bid is within the budget that's given to us by the government to deliver that project. To us, a cost overrun is if it's over that bid, so that benchmark is a public benchmark. If at the end it costs more than that, then that will be known. But I would say there is disclosure around how we're doing with the bid.

Ms. Lisa MacLeod: Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. That really concludes the time that we have available this morning, but we certainly appreciate that you've come again and provided us with further insight.

We're now going to move, for the remainder of our time, into closed session. So I will give people time in order to get organized for that, and we will have a brief recess.

The committee continued in closed session at 1007.

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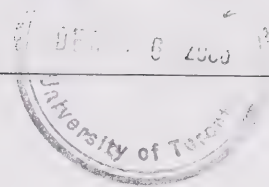
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Standing Committee on Government Agencies

Agency review:

Ontario Securities Commission

Comité permanent des organismes gouvernementaux

Examen des organismes
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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 2 December 2008

Mardi 2 décembre 2008

The committee met at 0902 in room 151, following a closed session.

AGENCY REVIEW

ONTARIO SECURITIES COMMISSION

The Chair (Mrs. Julia Munro): Good morning, ladies and gentlemen, and welcome to the Standing Committee on Government Agencies. I would like to first of all recognize our guests here, Mr. David Wilson, the chair and CEO, and Ms. Peggy Dowdall-Logie, the executive director, to the witness table. Welcome to the standing committee on agencies. I know that you know you will have 30 minutes in which to make your presentation. For the purposes of Hansard, I would ask you to identify those with you. We are ready if you are ready.

Mr. David Wilson: Thank you, Madam Chair and members of the standing committee, ladies and gentlemen. My name is David Wilson and I'm chair of the Ontario Securities Commission. As the Chair mentioned, with me is Peggy Dowdall-Logie, who's the OSC executive director and chief administrative officer. On my right are our vice-chairs, Jim Turner and Larry Ritchie. Also with us in the room today from the OSC are our lead director, David Knight, sitting behind me, the chair of the commission's human resources and compensation committee Margot Howard, and Ken Gibson, director of corporate services.

We welcome the opportunity to appear before the committee and to answer any questions you may have about the OSC, our authority and how we're using it, our responsibilities and how we're meeting them.

With the recent events in the financial markets worldwide, including those in Ontario, our invitation to appear before you is very timely indeed. I will of course talk about the current crisis in the markets, but before I do that, I'll review the mandate of the OSC because the key aspects of our mandate are highlighted by the current situation. I'll touch on two high-profile aspects of securities regulation: enforcement and the potential reform of Canada's securities regulatory structure. Then finally, I'll discuss the OSC's accountability to the Legislature and to the people of Ontario. It's a lot to cover and I respect the committee's time. I hope to finish my remarks in about 25 minutes, so let me begin.

First, the mandate of the Ontario Securities Commission. The task assigned by statute to the OSC is two-

fold: to provide protection to investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in those markets. The commission is responsible for administering and enforcing two main pieces of Ontario legislation: the Securities Act and the Commodity Futures Act. We're fully accountable to the Legislature and responsible to it through the Minister of Finance.

Unlike most government agencies, the OSC is not funded by the taxpayers of Ontario. We're self-funded through fees charged to participants in Ontario's capital markets. That includes anyone who sells securities in Ontario or gives advice about investing in securities as well as companies that issue their securities to the public. As a securities regulator, the commission makes rules that have the force of law and adopts policies that influence the activities of market participants. All rules must be submitted to the minister for his consideration and approval.

We also have oversight of two self-regulatory organizations for the securities industry in Ontario, as well as the Toronto Stock Exchange. The OSC is also an adjudicator of administrative proceedings involving breaches of securities law. In that role, the commissioners act as independent adjudicators on panels. However, there is a strict separation between the adjudicative function and the enforcement activities of the OSC. Commissioners involved in one do not participate in the other. We do not act as both prosecutor and judge.

While the OSC is the largest securities regulator in Canada, we're certainly not alone. As you know, every province and territory in Canada has a parallel agency. Together, the 13 securities regulators make up the Canadian Securities Administrators, which I'll refer to today as the CSA.

Let me now turn to what's uppermost in most people's minds these days: the current crisis in financial markets around the world. There isn't time this morning to give you a full review of the recent events and their ramifications, but I can tell you this: No one anywhere has all the answers to the obvious and fundamental questions, "How did this happen?" and "What should we do about it?" I can, however, identify the root causes of the crisis and tell you what the OSC has done in response.

Although it's clearly being felt in our markets, the crisis did not start here and it did not start in the stock market. It's a crisis caused by excess leverage: too much borrowing and too many people living on credit. In the

past few years, the amount of total debt in the United States has grown to three and a half times its annual gross domestic product. That's up from the norm of about one and a half times that prevailed throughout the period from the 1940s through to the 1990s.

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Debt is not always a bad thing in and of itself, but excessive and unsupportable debt certainly is, and that's where things began to go wrong. The catalyst for the crisis can be traced back to the lowering of lending standards in the United States. With increasingly complex debt products and increased connectivity between markets, more and more markets in more places became vulnerable to the collapse of the US housing market. When that bubble burst, the whole house of cards began to fall.

This isn't just a problem for Wall Street or Bay Street; it has erased billions of dollars of market value and affected the pensions and savings of millions of people. It has, and will, cost jobs for people who have never heard of a credit default swap, the derivative instrument that was very much a part of the current crisis. It's already affecting governments and their programs, including, of course, here in Ontario.

However, we should all understand that, compared with other countries, Canada is relatively better off. A recent assessment by the International Monetary Fund found that our financial system is underpinned by sound macroeconomic policies and strong prudential regulation and supervision. These strengths have not immunized us from what has been called the toxic mortgage contagion, but they have, so far, protected our financial institutions from its worst symptoms.

The fundamental issue here is why a setback in the US housing market should lead to a threatened worldwide recession. The answer is the resulting liquidity crisis, unequalled in almost a century. It was triggered by a global crisis of confidence: Many investors stopped believing that their investments were sound.

As you heard, fostering confidence in capital markets is part of the OSC's mandate. There's an important difference between people's confidence that they will earn a return by investing in the market on the one hand and the confidence of investors in the integrity of that market, that they'll be treated fairly and protected should they decide to invest.

The OSC can't make people want to invest. We can't control what happens to their investments if they do and we can't eliminate investment risks. But we can play our part in fostering confidence in the integrity of our markets, and we have. For example:

—We've just completed targeted continuous disclosure reviews of all public companies in the banking and financial services sector as well as other highly leveraged reporting issuers.

—We've initiated a review of money market funds to assess potential exposure to toxic assets.

—As the crisis reached the equity markets, the US Securities and Exchange Commission and the OSC

temporarily prohibited short selling of certain interlisted financial sector stocks.

—The OSC led the preparation of a CSA consultation paper on non-bank-sponsored, asset-backed commercial paper, ABCP. The paper outlines several regulatory proposals related to the frozen ABCP market. These proposals include measures to restrict the way complex short-term debt products are sold to retail investors, and the need to regulate and oversee credit rating agencies.

A crisis of this scope requires close co-operation with others. Within Canada, we have been intensively co-ordinating our activities with the Bank of Canada the federal Department of Finance, the Ontario Ministry of Finance, the office of the superintendent of financial institutions, and other Canadian securities regulators and the SROs in Canada.

A global crisis requires a considered and coordinated global response, so we're also working with regulators in other countries, particularly the SEC in the US and the International Organization of Securities Commissions, IOSCO.

Against that backdrop, I'd now like to turn to what else the OSC is doing to fulfill its mandate, first in the area of investor protection. This is one of the two main elements of our statutory mandate. In our statement of priorities we say:

"The interests and needs of investors, particularly retail investors, will continue to be strongly reflected in all of the OSC's operations. In addition to our enforcement activities, investor education and awareness and timely access to accurate information are important components of investor protection."

Investor protection does not mean that we hope to make investing 100% risk-free. Risk is an inherent element of investing and an essential feature of functioning capital markets. It always has been and always will be. Rather, our goal is to minimize practices that are, as our mandate says, "unfair, improper or fraudulent." It's to create a level playing field for all investors, where potential risks and rewards are clearly disclosed to all, and all at the same time. That's fair.

We believe that good regulation protects investors, and we believe that we have good regulation in Ontario. That regulation sets the standards for Canada and, according to a 2008 report from the World Bank, Canada ranks fifth in the world for investor protection. By way of comparison, the United States ranks seventh.

Here are some examples of steps we've taken to improve investor protection in Ontario:

—The OSC has been working with the other regulators to enhance the disclosure regime for investors before they buy mutual funds or segregated funds.

—We've brought in regulations requiring "fair value accounting" to ensure that issuers' financial statements reflect the true current value of their investments.

—In 2007, the OSC and the CSA imposed a minimum consistent standard of independent oversight of investment fund managers across Canada.

—We encourage the use of plain language in information provided to investors. Disclosure isn't useful if only a securities lawyer can decipher it.

—Similarly, we've worked to improve how investor complaints are handled so that concerns can be resolved as efficiently and effectively as possible.

Fundamentally, we believe that knowledge gained through the disclosure of information is the best protection for investors. The bedrock of our regulatory system is full, fair and timely disclosure of all information that could be expected to influence investment decisions.

As former US Supreme Court Justice Louis Brandeis famously said, "Sunlight is the best disinfectant." We believe that disclosure is that sunlight. We constantly monitor activities in the markets to ensure that there's compliance with this fundamental principle.

The logic is pretty simple: Knowledge protects investors. That protection fosters confidence in market integrity. Confidence makes for an efficient market. An efficient market fuels the economy, and a stronger economy is good for citizens and businesses.

Fostering fair and efficient capital markets is the other half of our statutory mandate. We strive to find the right balance when it comes to regulation. We clearly cannot have markets that have little or no regulation. Even the US seems to be coming around to the idea that deregulation there went too far, in retrospect.

On the other hand, we shouldn't overregulate. Weighing down the markets with too much regulation in an effort to reduce investor risk simply creates a market that's inefficient and not competitive with other capital markets around the world.

We need to remember that Ontario is in competition with other markets and that competition is based on the efficiency, as well as the safety and integrity, of our markets for investors. If Ontario is too burdensome, too slow, too bureaucratic, then issuers—businesses that need capital—will simply go elsewhere. Ontario's financial services industry would then suffer, and this is a very important business for all of us.

The financial services industry that we help regulate is essential to Ontario's economy. First, the investment industry has the vital function of efficiently allocating capital—people's savings—to businesses that can use it to grow and foster economic development. That's the alchemy of turning savings into jobs.

On its own, the financial services industry employs some 350,000 people in Ontario, jobs that are part of the knowledge economy. And it's estimated that the financial sector indirectly supports at least an equal number of jobs outside the sector. In the Toronto area alone, the financial services industry pays out more than \$10 billion annually in wages.

The financial services industry paid \$2.6 billion in net provincial corporate tax last year, not including provincial sales tax, GST and other personal income taxes paid by its employees.

A key priority for us is to make sure Ontario has the right regulatory framework, one that's stable enough to

be seen as reliable by all market participants but also to be able to evolve and keep pace with one of the most innovative and dynamic industries in the world.

For example, one of the important issues we have to look at is the regulation of derivatives, like the credit default swaps that, as I mentioned earlier, played a role in the current financial crisis. These instruments were unheard of when the Commodity Futures Act was introduced in Ontario in 1979.

By striking the right balance and keeping our securities markets both safe and competitive, the OSC contributes to the economy.

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Central to confidence in the OSC's role is enforcement. Market participants and in fact all the people of Ontario need to know that our rules will be enforced and that wrongdoers will be punished.

The OSC, while a leader in securities regulation, is just one part of what has become known as the Canadian securities enforcement mosaic. The mosaic is a complex arrangement that includes 13 provincial and territorial securities commissions, two self-regulatory organizations and national, provincial and, sometimes, local police services, and that's only for investigations. For prosecution and adjudication of enforcement matters, we add 13 provinces and territories, with their own crown prosecutors and various courts, as well as federal prosecutors.

Our job at the OSC is to enforce compliance with Ontario's Securities Act. The act gives us certain powers to enforce regulatory law, but not criminal law. Our staff can investigate many types of breaches of regulations and policies and usually bring enforcement proceedings before the commission's administrative tribunals, which have a protective, public interest jurisdiction.

The powers granted under the act can be effective at promptly stopping improper activities as well as deterring improper conduct. We can also stop people from participating in our markets. We can ban them from working in a public company as an officer or director. We can impose administrative penalties on them. We can order them to disgorge ill-gotten profits, and we can seek freeze orders to protect investor assets.

The act also gives the OSC the power to bring quasi-criminal charges against alleged wrongdoers in the lower Divisional Court in Ontario. But there, our ability to seek jail terms is limited. Under current legislation, the power to prosecute alleged criminal wrongdoing lies with the criminal justice system, typically through prosecutions by the provincial or federal Attorneys General.

Enforcement is probably the area where the OSC comes in for the most criticism, but much of it is based on the belief that the OSC, and the OSC alone, is responsible for all securities enforcement in all of Canada. The mosaic I described, and the differentiation between regulatory and criminal law enforcement, means that is just not true.

We're often compared with the SEC. The SEC operates through the entire US under a very different structure and is often credited with enforcement that's actually

performed by criminal authorities in the US: the Justice Department or a particular state's Attorney General. So it's difficult to directly compare the US and Canadian systems.

Within the system we have, the OSC has a number of notable successes in enforcement; for example, last year, we created a special boiler-room unit to find and close improper sales operations targeting unsophisticated retail investors. The unit has so far secured cease-trade orders, essentially shutdowns, against 22 firms and 48 individuals. Last year, the enforcement branch went to the Superior Courts in Ontario to obtain freeze orders totalling more than \$16 million to prevent the dissipation of investors' funds by fraudulent means.

Can we do a better job in enforcement? Yes, and we will. We have initiatives under way aimed at enhancing market surveillance and the detection of insider trading. Right now, we're reviewing every aspect of our enforcement activities, and you can expect to see some changes for the better.

I would now like to turn to another of the high-profile issues in securities regulation: the possible reform of the very structure of regulation.

The arguments for and against the development of a common securities regulator have been made over the last 40 years; I won't belabour them here. But I want to remind you where the OSC stands. The OSC fully supports the government of Ontario, which favours a common securities regulator. The federal government also supports that change. From the public discussion, Canada's business community appears to support the improved oversight that would result from a common regulator.

The fact is that Canada is the only industrialized country in the world that doesn't have a national securities regulator. The need for international co-operation to respond to the global crisis highlights the need for Canada to speak with one voice internationally. However, until there is structural change mandated by the various governments, the OSC will continue to work within the current regime to the very best of our ability.

Before I conclude, I would like to talk specifically about accountability. That is, after all, why we're here—because we report to the Minister of Finance and we're accountable to the Legislature and, through you, to the people of Ontario.

We see three main features of accountability. The first is how effectively we use the authority we've been granted under the legislation and the funds we collect from market participants. We believe we use both our authority and our revenue efficiently. The OSC currently has 438 dedicated employees and a budget of about \$86 million for this year. With these resources, we regulate the largest capital market in Canada.

We're fully aligned with the efforts of the provincial government to strengthen efficiency and accountability in the public service. Our structures, policies and procedures are also fully aligned with the best corporate governance practices. These are the practices we expect from those we regulate, so we lead by example ourselves.

Our commissioners, currently 13 of them, are the OSC's board of directors. As well as adjudicating at hearings, they meet every two weeks to review policy matters and regularly, as a board would, to oversee the operations of the OSC. Our board has independent committees and an independent lead director, who is here today, David Knight. We have a memorandum of understanding with the minister which describes the roles and responsibilities of the minister and of the chair and the board of the commission. All of our governance practices can be found on our website and all of our regulatory policy reviews have public input. All of our hearings are open to the public and the media.

The second area of accountability is how well we serve market participants. We meet their needs by fostering fair, open and efficient markets and by being responsive to changes in those markets. Open communications with the stakeholders who are affected by our actions is an essential part of our regulatory process. Market participants are all encouraged to give us their feedback on proposed rules and policies during formal comment periods. We're also committed to delivering dependable and prompt services to market participants. Staff have service standards to meet in areas such as turnaround times on prospectus reviews, registration applications and other filings and contacts.

The third area of accountability that we strive to meet is less specific but of paramount importance. It's that we recognize every day our need to demonstrate our public value. Each year, we publish our key organizational priorities and report on our progress in achieving them. We require that OSC commissioners and employees maintain the highest standards of personal integrity and deal openly and fairly with all of our stakeholders.

In 2007, the OSC submitted to a detailed assessment by the International Monetary Fund as part of the review of the soundness and stability of Canada's financial sector. The review concluded that Canada has a robust regulatory framework for issuers, market intermediaries, secondary markets and self-regulatory organizations.

Our role in protecting Ontario investors and supporting the economy of Ontario has never been more important than it is today. Our ability to fulfill our role has probably never been tested as it's being tested today. The global crisis has illuminated the strengths and weaknesses of regulators around the world. Under that scrutiny, the OSC compares well.

The commissioners and staff of the OSC have the expertise, professionalism and dedication to meet the current challenges. We're conscious that we must be an organization in which investors and market participants can place their confidence, and be an organization in which the people of Ontario can take pride.

The Chair (Mrs. Julia Munro): We'll begin our rotation this morning with Mr. Prue.

Mr. Michael Prue: Given the OSC's legislative mandate to protect investors, why didn't it launch an investigation into its sellers and manufacturers of toxic asset-backed commercial paper? Wouldn't this have been

more appropriate than letting IIROC conduct the investigation?

Mr. David Wilson: There has been, as your question implies, Mr. Prue, an investigation into the manufacturers and distributors of asset-backed commercial paper. IIROC, whom you mentioned—the SRO—has published a report of its compliance sweep. However, I can tell you that the OSC, our counterpart in Quebec—the AMF—and IIROC have been working very closely together for the last 10 or 11 months doing intensive investigations of the conduct of manufacturers and distributors of non-bank-supported asset-backed commercial paper to both retail investors and to institutional investors.

Those investigations are under way right now. They're all very high priority. The three organizations that I mentioned are coordinating very closely together. I can't forecast when any enforcement actions will be announced or commence, but the work is happening right now and is very intensively being undertaken by the three organizations in co-operation.

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Mr. Michael Prue: What is the part the OSC's playing? A third of it, a quarter of it, half of it?

Mr. David Wilson: Registrants and issuers that are based in Ontario, our enforcement people are talking to them, reviewing the activity and conduct of those people. IIROC is doing the same thing for their members in Ontario. The same activity is happening in Quebec, where the AMF, the Quebec securities regulator, and IIROC's Quebec branch are co-operating and working doing the same sort of investigative activity.

Mr. Michael Prue: Mr. Turner, you are quoted in May's Globe and Mail as saying, in part, "We didn't feel we had to jump in to protect investors," after the ABCP market froze. You went on to talk about the ABCP situation, and it was like a wait-and-see approach. Would better disclosure or regulation in Ontario have prevented the ABCP disaster in this province?

Mr. James Turner: I think that there are a number of questions embedded in what you just said. Let me talk about the first issue, and that was really a timing issue. What we were saying was that the asset-backed commercial paper market had frozen, and therefore, as a result, it was not operating. We did not have to jump in to protect additional investors, because the market was shut down. So what I was saying in that quote was, given the timing, we did not have to exercise our jurisdiction to restrain activity in the market because that activity was not going on.

Having said that, I can assure you we are very sensitive to the position that retail investors have found themselves in with the asset-backed commercial paper circumstances. It causes us great concern. Having said that, I think we're optimistic that there is a private sector solution likely that is going to see most of those investors appropriately compensated.

Mr. Michael Prue: Over what period of time?

Mr. James Turner: Well, I'm referring to the Montreal accord. I think, as you know, it's been over a

year coming, but our expectation is that they are going to complete it within this month. That's what we're being advised by those directly involved.

Mr. Michael Prue: And the compensation to take place over what period of time?

Mr. James Turner: I really can't comment on that. That's—

Mr. David Wilson: I believe, Mr. Prue, that once the restructuring plan is completed and announced and effectively closed, a number of the distributors who distributed asset-backed commercial paper to their retail clients will, at that point, return to them 100% of their money to retail investors, including interest, but the restructuring has to be implemented and closed first. I believe that's the trigger point.

Mr. Michael Prue: The next question: The relatively unregulated credit rating industry has played a key role in furthering this financial crisis in Canada. What measures is the OSC considering in tightening regulations on behalf of the credit rating industry? My understanding is that they are exempted from liability in both the IPO and secondary trading class action suits.

Mr. David Wilson: Why don't I begin answering that question, and my colleague Jim Turner, who's an expert in this area, can add some answer to it?

The Canadian Securities Administrators, of which the OSC is the largest, published a paper for comment in September about the asset-backed commercial paper crisis. In that paper were proposals for much greater oversight and regulation of credit rating agencies operating in Canada. In effect, the proposal is to require them to comply with an international code of conduct for rating agencies, and to give us regulators in Canada the ability to go in and assure compliance, to check compliance. That's the proposal that's out there, to change the way credit rating agencies, who did make major mistakes in this crisis—to change the way they operate in our country.

As to the question that you raised, the expert, Mr. Turner, could probably answer that.

Mr. James Turner: Let me just say that as part of the working group, we felt it very important to be plugged in and taking account of what was happening around the world with respect to this issue.

On your technical question, Mr. Prue, our existing rule, as you suggested, with respect to liability under a prospectus does not impose liability on credit rating agencies. So when we came along to imposing civil liability in the market, it would have been inconsistent with our prospectus regime to have imposed liability in the secondary market. But more than that, under both regimes an expert is only liable if they consent to the use of their opinion. So the concern was that the credit rating agencies would not consent to the use of their credit ratings because of this potential liability. The consequence of that would be Canadian issuers would find it much more difficult to obtain ratings, and those ratings, obviously, can be important to those participants in the market.

Mr. Michael Prue: The next group of questions: Sadly, retail investors, not just large institutions with deep pockets, owned asset-backed commercial paper.

In 2005, Ontario joined other provinces to remove a provision that required a minimum ABCP purchase of \$50,000. Effectively, this allowed everyday investors to become involved whether or not they knew it. Many of these investors were sold asset-backed commercial paper as a safe, stable, GIC-like product. Trying to recover their money, these investors are now trapped in many, many legal messes.

My question: Will the OSC conduct an investigation into whether securities dealers who sold ABCPs to retail investors broke securities law, mainly the know-your-client provisions in OSC rule 31-505?

Mr. David Wilson: The short answer to your question is yes. The answer I gave to an earlier question of yours, Mr. Prue, I think is responsive.

Yes, the OSC, in co-operation with IIROC, is investigating exactly those activities you have described to see whether there was breach of Ontario Securities Commission rules or IIROC bylaws in the distribution of the paper and the suitability, know-your-client aspects of IIROC's rules. That's happening in Ontario and, as I mentioned earlier, a parallel process of investigation is happening in Quebec.

Mr. Michael Prue: And is it your intention to seek—and I use your own word—"disgorgement" of the monies back to people who have not been properly advised?

Mr. David Wilson: The investigations aren't completed yet. What sanctions we impose on any of those who misbehave, whether it's fines, disgorgements, penalties or bans, it's premature for me to speculate. But the investigations are under way, and there is a reasonable probability that they will lead to some enforcement cases.

Mr. Michael Prue: You said that you have launched an investigation with two other groups, Quebec and IIROC—

Mr. David Wilson: Correct.

Mr. Michael Prue: —but you have not launched one independently yourself. Can you tell me why you didn't do one independently yourself?

Mr. David Wilson: We work very closely with IIROC, the self-regulatory organization. IIROC really exists because we delegate some functions to them, and then we oversee their execution of those functions. So it is not unusual for the statutory regulator, the OSC, to work closely with our fellow self-regulatory body, to whom we have delegated powers, on investigation matters. It's not unusual, and it's quite a constructive way to get the facts out before deciding what enforcement actions might be appropriate.

Mr. Michael Prue: I have had a few meetings with representatives of the ABCP retail note-holders. They've lost their life's savings because securities dealers did not do their due diligence. Are you prepared to meet with the representatives to discuss needed regulatory remedies

that they believe are necessary or are you going to go it alone?

Mr. David Wilson: Our contact centre has contact with many, many investors. We probably have had communication with some of the people you're referring to, Mr. Prue, already. We do listen to stakeholders, harmed investors, and try to help them and direct them to places where they can get help with their issues. So if there are particular investors you wish us to meet with, we would be happy to arrange to have them appropriately contact our people.

Mr. Michael Prue: All right; I'll do that.

The Chair (Mrs. Julia Munro): I'd like to move on. Thank you very much, Mr. Flynn.

Mr. Kevin Daniel Flynn: Thank you, Mr. Wilson, for your presentation. Given the current market crisis—you could say that this is a political question; it could be an academic question. I'm sure there were a lot of MBAs watching your presentation this morning for posterity. But where the rubber hits the road for the average investor in Canada, it's probably the relationship that they have with their own financial adviser. That's probably what they see this is all about. How do you ensure, as you say on page 10, that the interests and the needs of investors, particularly retail investors, will continue to be strongly reflected in all of the OSC's operations? How do you ensure that a retail investor has the confidence that they're receiving the best advice from the person they've contracted to handle their investments? Is there any evidence that a financial adviser, for example, would treat their own investments any differently than they would treat their client's? Is the adviser's first loyalty to the market or to the client?

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Mr. David Wilson: There are quite a number of questions there, Mr. Flynn. Let me try to respond to some of them. I'd ask Peggy Logie, who is our executive director, but in her previous life has a lot of experience with retail investor oversight, to add to my answer.

I think part of your question, sir, was how do we assure that financial advisers, who have a critical role for retail investors and the investment of their savings, are qualified and giving proper and good advice? There are minimum proficiency standards for every financial adviser. They have to pass certain courses and have refresher courses on a cycled basis. That's one of the things. Financial advisers are all registered, so we have the ability to ban people from participating and giving advice if there's evidence that they haven't been proficient or they've misbehaved in the past. So there are a number of gates that a financial adviser has to get through so he can sit down with a retail investor and give his honest advice about the best way to manage their savings as they go forward. Those are some of the protections we've put before anyone can sit down with someone and their hard-earned savings.

Peggy, there are parts of Mr. Flynn's question having to do with conflicts that retail brokers have with their clients' money and how they handle those conflicts. Could you elaborate an answer on that one for us?

Mr. Kevin Daniel Flynn: I guess to make it very short and very simple for the average person who is watching today, would it be safe to assume, or would it be maybe wrong to assume, that the advisers themselves have suffered the same losses personally as their clients have?

Ms. Peggy Dowdall-Logie: I guess my response to that would maybe start in a different way. Just to identify myself, I am Peggy Dowdall-Logie, the executive director of the Ontario Securities Commission.

An investment adviser's first obligation is to their client. We have a series of rules within our act that focus on the know-your-client requirements of investment advisers. Starting from that premise, then, if you are an investment adviser and your first—primary—obligation is to your client, then the expectation is that your own personal interests are secondary to those of your client.

With respect to the question as to whether the investment adviser would find themselves in the same financial straits or financial situation as their client, I would like to assume that they are focused on their client book. That would be the first priority. Their own personal interests should be secondary.

Have I answered your question?

Mr. Kevin Daniel Flynn: Well, I think you've probably painted the world as we would like to see it. I guess the question I'm asking you is, would you have any knowledge that the actual reality of the situation is any different in that financial advisers treat their own small fortunes any differently than they would treat their client's?

There are a lot of angry people out there right now whose lives have been changed substantially by what's happened in the market. They're looking for some confidence that they should continue to invest in that market. They're starting to see, in Canada—I think some of the evidence that Mr. Wilson has given would instill that confidence that we've fared better than a lot of other nations. But I think there's also a nagging suspicion that when advice should have been given, perhaps it wasn't always given, or the right advice wasn't always given, or the advisers themselves may have taken different action before they advised their clients to take.

Mr. David Wilson: As Mr. Flynn said, we've painted a picture of the world as we would like to see it. My guess is that the world, in 99% of the cases, does function that way—with proper compliance and oversight of registered sales people in the various institutions.

As I say, Peggy, in her previous life, had a compliance role with a large Canadian financial institution. Is that a fair approximation? It's never perfect, but the vast, vast majority of financial advisers put their clients' interests before their own interests.

Ms. Peggy Dowdall-Logie: Certainly from a compliance perspective, those are the programs that you put in place when you're accountable for that oversight activity in a regulated investment dealer. You focus on the customer interests first. Certainly—I can speak from my previous life—one of the things that in the com-

pliance area we looked very closely at was the trading of the investment advisers, looking at things such as whose trade is going first? Is it the investment adviser's trade or the customer's trade? So you attempt to build processes within an organization to ensure that it's the customers' trades that are going through the trade desk prior to an investment adviser's trades.

Mr. Kevin Daniel Flynn: I think that probably most of us in this room caught the CBC interview with you, Mr. Wilson. You handled some pretty tough questions pretty well, and perhaps some questions you weren't anticipating came up during the interview. As much as it would be appropriate, one of the questions that came up was about the compensation structure for the OSC, and you answered that it's quite different from what we see at the SEC. I'm wondering, now that you have a little bit of time and you're not under the same microscope as an interview might place you under, if you'd care to expand on what some of those differences are and maybe what the public should know about those differences.

Mr. David Wilson: Sure, I'm happy to. I'll give an answer, and if you want more detail, we do have with us Margot Howard, the head of the HR committee of our board, as I mentioned earlier.

My compensation and the compensation of other order-in-council appointees—the vice-chairs—was established, in my case, when I joined the OSC three years ago. It's in a contract that was signed at the time and approved by the board of directors. The board of directors and its compensation committee have a process for assessing compensation of the government-appointed members of the board. There's an external advisory committee of two that was appointed by the minister some time ago, to which the HR committee of the OSC's board refers to get expert advice on the fairness and appropriateness of our compensation. The picture I'm painting is that there's a very thorough board oversight process establishing compensation for the government appointees. It's quite rigorous.

As I said, the head of our HR committee is here. If you'd like any more detail on it, Margot Howard could describe it for you in some detail if you wish.

Mr. Kevin Daniel Flynn: I think the big point that came out of the interview, and perhaps wasn't expanded on, is the difference between your own salary, with bonuses and performance clauses, and that of the head of the SEC. There's quite a dramatic difference, but I don't think the reason for that was ever properly explained. I wonder if somebody from your organization, without passing comment on it, would just explain what that difference might be.

Mr. David Wilson: The US system for government appointees is very different than in Canada. My understanding—I'm not an expert, by any means—is that the heads of US government agencies are not, under practice or law, I'm not sure which, able to earn more than the President or the Vice-President of the United States. That's a practice that has developed down there, and I gather that has influenced the compensation of the head of the SEC.

We are aware, because the SEC's compensation data is public, that there are 800 people who work at the SEC who earn more than their chairman.

Mr. Kevin Daniel Flynn: This may be a question for the HR folks, Mr. Wilson, or perhaps you can answer it: Would the method you have in place for determining that compensation be considered a performance appraisal system or a performance management system?

Mr. David Wilson: I would characterize it as a performance appraisal system. Margot Howard is here. Margot, would you like to comment briefly?

The Chair (Mrs. Julia Munro): Could I ask you to give your name for the purposes of Hansard?

Ms. Margot Howard: Hi. My name is Margot Howard, and I'm chair of the HRCC committee at the OSC.

If you are interested in the structure of the compensation, the chair's contract is an annual salary; it is an annual performance bonus. There is no long-term compensation that would be similar to what you would see in a public company that would be related to stock or long-term incentives. The history of where that came from is that the original contracts were negotiated with the minister at the time the OSC became an independent entity. Since that time, when the contracts have been renewed, the HRCC committee would have surveyed the external market—I would say that would be the private sector, be it private practice or public companies and private companies—as well as the public sector for similar agencies across Canada and also within Ontario. The assessment would be that it would not be appropriate that the chair of the OSC, or the other contract positions, would earn what they would earn either in private practice or at public companies outside, but what was comparable to similar agencies and reasonable, given the size of the OSC, was the conclusion that was reached by the committees at that time, and it has been reviewed since then.

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The bulk of the compensation is salary, but there is a performance element, and it is consistent as a percentage of salary with what senior management at the OSC get. So what they get, as far as a performance element, is the same as other senior management. At the beginning of the year, after the statement of priorities has been determined, the goals and objectives, save for the chair, would be set with the HRCC and approved by the board. At the end of the year, there would be a review process that would take place—and interim steps throughout the year, because you wouldn't want to get to the end and get your report card. At that time, when a conclusion has been reached by the HRCC committee, it is taken to the external compensation committee, of which I am a member, and there are two outside members who have quite extensive human resources experience—they are appointed by the minister—and then it's brought back to the board for discussion and approval. That is the process that takes place. It is a combination of those components.

Mr. Kevin Daniel Flynn: I have one very small question, and then I think I want to save some time for my colleagues.

Many people would understand a sales bonus: Let's say if you sell 20 cars, you would get a bonus for doing that. How would you apply a measurable to the compensation structure at the OSC? What do you use as the determinants that a bonus or premium should be applied?

Ms. Margot Howard: You're right: It's not as easy as something that has a quantitative aspect like cars, but still there are management objectives that the board has set, there are areas where we're looking for strategic development; for example, succession planning objectives that the board may have, how the relationship is managed with other agencies we have to work closely with. Those are the sorts of things that would be in the goals and objectives, and those would be reviewed. And you're right: There would be a qualitative element to that. But that is the reality of senior management.

The Chair (Mrs. Julia Munro): We'll move on to Ms. MacLeod.

Ms. Lisa MacLeod: I'll be splitting my time with Tim Hudak, our MPP for Niagara West—Glanbrook. I'd like to welcome Mr. Wilson and all of his colleagues here today. I appreciate your coming; obviously this is very timely.

You went through a lot. You acknowledged at the very beginning of your speech that you would be covering a lot of ground, and I think you talked about seven very substantive issues in your 25-minute presentation. So I'm hoping, if we do not cover all the ground as a committee today, that your organization would be willing to come back, as we've had other agencies we've reviewed come back two or three times, as this economic crisis, which is worldwide but is certainly hitting Ontario, deepens. I would hope that if we don't cover that ground today, you would be willing to come before us again.

Mr. David Wilson: We will do whatever our minister advises us we should do. If he advises us to come back, I'm sure we would do so.

Ms. Lisa MacLeod: Okay. I guess I will request that.

You recognized in your presentation that your role is to protect the integrity of the markets and to protect investors. You mentioned specifically in your remarks that Ontario competitiveness is based on the safety and integrity of our markets for investors. Notwithstanding the IMF's review that suggested Canada has a robust regulatory framework, there's an American academic from Indiana, Utpal Bhattacharya, who, when comparing the enforcement records in the US and of the OSC, says he found enforcement in Ontario was pathetic. He went on to say that Canada is a First World country with a Second World capital market and Third World enforcement. Compare that with Barbara Stymiest, the chief operating officer for the Royal Bank of Canada and former CEO of the Toronto Stock Exchange, who called Canada's securities enforcement an international embarrassment.

Your role in the OSC is to protect investors; it's to protect the integrity of the market.

As a legislator, I receive complaints from my constituents and, actually, people from across Canada about the OSC. I have a few questions, then, on their behalf, and I'm going to ask them all at once because I want to

give my colleague, who's our finance critic in the opposition, the opportunity to make remarks: How many people have you banned from participating in the markets in Ontario? Can you provide statistics on your enforcement activities? Are you actively reviewing your enforcement activities? And, do you require greater enforcement power?

Mr. David Wilson: I got three questions there. Just to review them, you asked for some statistics, you asked about our plans to change our enforcement activities, and—excuse me. What was the third one?

Ms. Lisa MacLeod: Essentially, there were four. How many people have you banned from participating in the markets? Can we get the statistics on your enforcement activities? Are you actively reviewing your enforcement activities? And finally, do you need greater enforcement power?

Mr. David Wilson: We can talk about how many people we've banned and other statistics in a moment. I'll answer the third and fourth questions first, and I'll ask my colleague Peggy Dowdall-Logie—we did bring some statistics with us today anticipating the sorts of questions you've asked, but we can provide more later.

Let me answer your third question first, which was, are we planning to make changes in our enforcement activities? The answer is, at the OSC, which, as I described in my opening remarks, is a part of the enforcement mosaic in Canada—there's the criminal part and the regulatory part; we are the regulatory part in the largest province in the country—yes, we are planning on making changes in our enforcement activities in our own backyard, so to speak. We are currently searching for a new head of our enforcement branch. That search has been ongoing since September. So there will be new leadership in that branch. We're doing a strategic review now—and when the new leader arrives, with the new leader—of the priorities that we've set in our enforcement branch. It's a refresh of the function that we perform. So, yes, we are making changes that we are able to make within the confines of our own organization.

We are also actively talking to other members in the enforcement mosaic. Proposing reforms would make the functioning of all parts, the criminal and regulatory parts, work more effectively. A year ago, I co-chaired a task force created by the Attorneys General across Canada called the Securities Fraud Enforcement Working Group. I co-chaired it with the Deputy Attorney General in Quebec. We came out with six recommendations. The Attorney General's ministry in Ontario has our recommendations. Those recommendations are all being worked on.

So my answer really has two parts. We are working in our own domain at the OSC to make some changes and bring in some fresh leadership, and we're also working in the broader mosaic. My colleague Larry Ritchie is working with me on a number of these proposals. They're not just securities regulatory proposals; they're proposals that would change, for example, the ability of investigators to get information from witnesses, to compel testimony in

certain confined circumstances. Quite a number of things are being considered. So it's a long answer.

There's a lot of activity to try to improve the effectiveness of enforcement in Canada. I don't buy the rhetoric of the quote you use, but there's always room for improvement. I fully accept that. So we're working very hard on that.

Peggy, are you ready to give some statistics to Ms. MacLeod? We can provide more later, if she would like more.

Ms. Peggy Dowdall-Logie: Yes. I don't know if these statistics are actually going to be on track with respect to the specific questions you asked—for example, how many people have we banned from the markets? What I can do is attempt to get at the question by giving you other information, and then if at the end of my response you believe that I really haven't gotten to the core of your question, I'm certainly happy to provide more data at a later date.

From 2003 to 2008, the staff of the OSC have initiated approximately 431 actions against individuals and corporations. During that period, a total of three individuals were not convicted in provincial court, and there are two commission proceedings where allegations were not proven during that period as well. That's the number of actions that have been brought forward by staff of the commission from 2003 to 2008.

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Let me now narrow in with respect to where we are in 2008 with ongoing matters. I can't speak specifically about individual instances, but I can give you a flavour of the kinds of matters that are open in the enforcement branch.

With respect to fraud and insider trading, matters that staff of the branch are currently looking at, we have the following: We have one in the area of abusive sales practices; 22 in the area of abusive trading practices; 17 suspected—and I say “suspected”—fraud cases; 89 suspected illegal insider trading cases; 11 suspected non-compliance with a commission order; 23 suspected non-disclosure or misleading disclosure files; seven suspected sales of unregistered securities; and 87 suspected trading without registration or prospectus, for a total of 257 open files.

Am I getting anywhere in the range of what you're looking for?

Ms. Lisa MacLeod: That's helpful. The information we received from research and information services here at the Legislature gave us percentages, so at least we're getting to raw numbers. Might I suggest, then, that it might be best for you to get back to this committee with some of the direct questions that I've asked; if you could table those with the clerk.

Ms. Peggy Dowdall-Logie: Sure.

Ms. Lisa MacLeod: I'm glad you brought up insider trading, because that seems to be very much a concern in Ontario. Obviously it's a concern in the United States, and I don't think, from my research, anyway, that we have done enough; that is a whole discussion in and of itself.

Just one follow-up question with respect to human resources that you mentioned: You are without a head of enforcement and you have been without a head of enforcement since September?

Mr. David Wilson: That's correct.

Ms. Lisa MacLeod: Could you enlighten this committee as to why the province of Ontario and the Ontario Securities Commission does not have a head of enforcement, when it seems to be one of the biggest criticisms levelled against this organization? If you could just bring us up to speed.

Mr. David Wilson: Yes, sure, of course. The former head of enforcement, Michael Watson, was seconded to the IMETs unit, which, as many of you know, is the RCMP's securities fraud and enforcement specialist group. I guess he left the commission physically—

Ms. Peggy Dowdall-Logie: September 15.

Mr. David Wilson:—on September 15, and as often happens when there's an open position at the commission, we put in place interim arrangements so that the machine keeps functioning. Since September 15, Peggy Logie, the executive director, has been overseer of the enforcement branch. Peggy, why don't you give Ms. MacLeod kind of the operational approach you took to keep the machine of our enforcement branch running well as we search for a new leader?

Ms. Peggy Dowdall-Logie: One of the areas that we focused on in the past couple of years is succession planning, of course. We have what I believe and what we all believe is a very strong, capable senior management team in the enforcement area.

I rely on the senior management team on a daily basis, and we have created an operating committee which meets daily to deal with any open matters and any urgent issues that are coming forward to us. But we have an enforcement branch that is structured around intake, investigations and litigation, and we have key leaders in each of those three areas. What is happening currently is that those three areas report to me, and cooperatively we work together to manage the enforcement branch during the interim period.

Ms. Lisa MacLeod: Thank you.

Ms. Peggy Dowdall-Logie: You're welcome.

Ms. Lisa MacLeod: Mr. Hudak—

The Chair (Mrs. Julia Munro): I was going to say that I'd like to move on, but if you wish to take a minute or two—

Mr. Tim Hudak: No. Do you know what? I'll do it as a block. Thank you, Chair.

The Chair (Mrs. Julia Munro): Okay. Thank you. We'll go on to Mr. Prue, then.

Mr. Michael Prue: How much time do I have left?

The Chair (Mrs. Julia Munro): You have 10 minutes.

Mr. Michael Prue: Ten minutes; perfect.

In the US, the SEC is investigating capital market manipulation in the 2007-08 period by hedge funds and other relatively unregulated players. We all know that Canada and the United States are facing different secur-

ities issues, but is the OSC conducting any similar investigations?

Mr. David Wilson: The OSC pursues every indication of unusual market activity, so that's a generic answer. In the statistics that Peggy Logie just gave you, we have 89 insider-trading files currently open. Mr. Prue, I don't know exactly how many of those relate to potential market abuse, insider trading during the crisis, but 89 open insider-trading files is a goodly number of open cases for insider trading.

Mr. Michael Prue: It seems to me that, with 287 outstanding cases, there's an awful lot of wrongdoing going on down there at the OSC—not at the OSC; on the trading floor.

Mr. David Wilson: That wouldn't be a good thing in a regulator.

Mr. Michael Prue: Sorry—on the trading floor. Those are the ones you're catching. That seems to me to be quite huge.

Mr. David Wilson: I really haven't got a relative comparator for how many open files there are in Quebec or BC or the SEC for you, Mr. Prue.

Peggy, you're looking expectant. Do you have anything to add on putting things in some context?

Ms. Peggy Dowdall-Logie: Yes. As David said, the 89 is a raw number. So those would be matters that would come to us from IIROC. IIROC has a daily practice of monitoring markets, and if they see anything that looks like suspicious activity they send it to us, and then we run it through a program—I don't want to get into a lot of the details. That 89 would then turn into a different number at a certain point, as we walk our way through the investigations. I think what the 89 is indicating is a level of sensitivity in the programming that both IIROC has with respect to their market monitoring, and then with respect to the programming that we use to, in fact, come out to the results of an investigation.

Mr. David Wilson: On a generics basis, I'd say that we are not unhappy to have 250 open investigation files. It proves, in numerical terms, that we are very active and busy. One of the quotes that Ms. MacLeod had in her earlier question was that the OSC doesn't do enough. Well, we're doing plenty, and those numbers demonstrate it.

Mr. Michael Prue: But you don't have a plan, like the United States, that you're actively going out looking at this. You're doing it on an individual basis.

Mr. David Wilson: We're doing it as the possible unusual market activity comes through, but we have created within the enforcement branch a specialized insider-trading unit that takes the information from IIROC, analyzes it, decides how to best gather the information with the quest for proving wrongdoing, if it in fact occurred. So there is a specialized insider-trading unit, just as the SEC has, I believe, and certainly as the comparable regulator in the UK, the FSA, has a specialized insider-trading unit.

Mr. Michael Prue: Okay. To go on in the same vein, Utpal Bhattacharya, a professor of finance at Indiana

University, conducted a study as part of the Task Force to Modernize Securities Legislation in Canada in 2006. He compared securities enforcement by OSC and the SEC. Here's one of his conclusions, and it's troubling to me: "The SEC prosecutes 10 times more cases for all securities laws violations, and 20 times more insider-trading violations than the OSC prosecutes...." And "the SEC ... fines 17 times more per insider-trading case than the OSC does." Why is this?

Mr. David Wilson: Well, those are pretty dramatic numbers. Of course, I'll make the obvious first comment. The SEC is the regulator for a country of 300 million people; the OSC is the regulator for a province that has 13 million people. So just on the arithmetic of population—I don't know if he has adjusted for population in those numbers, but it's—

Mr. Michael Prue: I believe so.

Mr. David Wilson: I'll just ask—he did adjust for population? Okay. I just wanted to clarify that.

Mr. Michael Prue: Yes. So why is it that they prosecute 10 times more cases? Why is it that they have 20 times more insider-trading violations than the OSC prosecutes? Why is it that the SEC fines 17 times more per insider-trading case? That's the nub of what everybody wants to know: Why is it that they do all of this and we appear not to?

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Mr. David Wilson: Well, we have, as I said in answer to your previous question, and as Peggy said, a lot of open files—89 open files right now on insider trading, so we're very active in the area.

I don't have an explanation about the difference in the numbers in that study that was done. The markets are different. There may be different conduct. It's very hard to compare market to market.

We can get you some numbers, if you wish, on activity in the United Kingdom, because we're aware that in the UK, there's a lot of criticism that the FSA doesn't prosecute insider trading as much as the SEC either. Different legal systems make comparisons quite difficult.

Insider trading is a criminal offence in certain cases, and the OSC doesn't pursue criminal activity, as I mentioned in my opening remarks. So it's very hard to get an apples-to-apples comparison that's valid. That's the best answer I can give you, Mr. Prue.

Mr. Michael Prue: Okay. On the same enforcement, we have information that's been provided by research: "Enforcement: Concluded settlement and contested hearings before the commission." It shows that the number of proceedings continues to decline.

On individual respondents: 2005-06 was 36; 2006-07, it went down to 26; and in 2007-08, down to 12.

Corporate respondents, the same thing: 16 in the first year, then down to five, and this year, down to four.

Sanctions: Cease-trade orders went from 17 the first year, 2005-06, up to 18—it actually went up one—in 2006-07, but down to 10 the last fiscal year.

Exemptions removed: 11 the first year; slightly up, to 14; but now down again this year to seven.

Director and officer bans: 21 in 2005-06, down to 12 in 2006-07, and down to eight in 2007-08.

Registration restrictions: 11 in 2005-06, down the next year to five, and then down this year to four.

All of the statistics are going down and down and down in what you're doing. Now you tell me—I just asked you about the States, and you're telling me that everything seems to be fine.

Mr. David Wilson: The numbers that you've read out, I believe, are from our annual report.

Mr. Michael Prue: Yes.

Mr. David Wilson: We have those numbers in front of us here today. We also have numbers which are not published yet, which will be in our annual report when we produce it. We have numbers for the first six months of 2008-09 in those same categories that you cited.

Mr. Michael Prue: And what do they show? That your numbers are starting to go back up?

Mr. David Wilson: I can walk through those seven numbers, if you like, or we can provide them to the committee offline.

Mr. Michael Prue: Sure, okay. For the first six months of this year, what are they?

Mr. David Wilson: The number of proceedings is 10. Individual respondents is 13. Corporate respondents, the number is two.

This is for six months, so if you simply annualize them, the numbers would double.

Cease-trade orders, the number is 11; exemptions removed, the number is eight; director and officer bans, the number is 11; registration restrictions, the number is three.

These are our six-month numbers so far this year.

Mr. Michael Prue: All right, so they seem to be going back up, then. Why is that?

Mr. David Wilson: The numbers are not a steady stream every year. Peggy, do you have something to add?

Ms. Peggy Dowdall-Logie: In many cases, it depends on the complexity of the files that we're focused on in the enforcement branch. As David says, it's very difficult to come to a conclusion based on a 12-month activity. What we attempt to do here is provide a snapshot, but we recognize that it is not an accurate snapshot necessarily, because of the types of files that we're taking in on a day-to-day basis. So, if we have a particular file that has a number of complex components to it, clearly that is going to take a longer period of time.

Now, one of the things that I would like to add to what David was just talking about: With respect to the registration restrictions, we do have a tool that we do use with respect to registration, which is called terms and conditions. I don't know whether you have that data, but I'll give it to you if you're interested in it.

For the six months up to today's date, we have attached terms and conditions to 742 firms and 1,020 individuals, terms and conditions on registration. That's a fairly proactive and powerful tool that we have and it is something that we will begin to report on in our upcoming annual report.

The Chair (Mrs. Julia Munro): Thank you very much. We must move on. Mr. Ramsay?

Mr. David Ramsay: Thank you very much for your presentation, Mr. Wilson. I want to return to the area of regulation. You note in your presentation that good regulation protects the investor, and rightfully so. You also mention that one should be careful not to overregulate. I think what we're talking about there is that you want to have an efficient market so that it's free to do its job. I guess what we're talking about is a sense of balance there.

You also note that the World Bank has rated us fifth in the world in regards to regulatory protection—the United States, seventh in the world. Throughout your presentation, you always talk about how we can do better, and, of course, that's why we, as legislators, are here always trying to do better.

I'd be interested to know what other jurisdictions are ranked above us by the World Bank and, in your opinion, if these are efficient markets. Could we still bring in more regulation and still pride ourselves that we would have an efficient market that would function well?

Mr. David Wilson: Mr. Ramsay, I'm sorry, I don't have in my head the rankings. I know that Canada ranked fifth in this particular study and the US ranked seventh, but I'd be happy to get you the full list of ranked countries in terms of investor protection, as ranked by the World Bank, after the hearing. I just don't know who the other countries are. I could speculate but I'd want to confirm that they are all developed market countries, countries with fully robust, developed markets; developed in the same sense as the US and Canada, so countries like the UK, France, Hong Kong and Australia. That's a guess, but we can get you the numbers.

Mr. David Ramsay: I'd be interested, as the regulator and the enforcer—as a legislator, from my side, are there more tools that we could give you to make your job more effective in what you do day to day?

Mr. David Wilson: Thank you for that question. I think that was the unanswered question that Ms. MacLeod had earlier—what other tools would be useful for the OSC to have to do our part of the work in the enforcement mosaic.

We just did receive a new law passed by the Legislature called "reciprocal orders." I just thanked the minister for that when I met with him 10 days ago or so. What a reciprocal order does is it allows us to recognize a judgment in an enforcement matter in another province, like Alberta. We can then impose the same sanction on that person on a reciprocal basis in Ontario. It's a useful power to make a more uniform enforcement landscape in Canada. That's a small example.

In terms of other asks, the minister has asked us that very same question. The reciprocal order was the first thing we asked him to do. Larry Ritchie and I are working on other aspects of the enforcement mosaic outside the powers we have in the statute. I think it's fair to say, Larry, that the powers in the statute, which have been augmented periodically in the last four or five years by

the Legislature for the securities regulatory piece, are ample for the moment. Is that fair to say?

Mr. Lawrence Ritchie: That is true, and one of the points that we should emphasize in terms of the work that we are doing really goes back to the comments that David made about the enforcement mosaic and the role that the OSC plays in enforcement with our other partners in the mosaic. That's a very important reality on the ground and it is something that we have to focus on and we are focusing on, in terms of working with our other partners to break down the silos that have traditionally existed between all of the elements in the mosaic, and have a broader understanding of all elements in the mosaic: sharing information, making sure that the appropriate part of the mosaic reacts promptly and most effectively when a matter comes up, greater intake, broader education, sharing of those resources and a greater understanding of what each of us can do in that part. That's sort of outside of squarely the legislative, but it is a constant examination of whether we, as members of the mosaic, have the effective tools and how we can better use the tools that we already have in the Legislature and in other pieces of legislation like the Criminal Code.

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Mr. David Ramsay: Good, thank you.

The Chair (Mrs. Julia Munro): Thank you very much, and we'll move on, then, to Mr. Hudak.

Mr. Tim Hudak: Thank you very much, folks, for coming before the agencies committee today. I want to revisit what my colleague Ms. MacLeod had brought forward, the issue of what is sadly known as the Canadian discount, the notion that there is not trust in the regulator in the province of Ontario or in our system overall, and that means international investors need have an enhancement or a discount on their decisions to make up for lax enforcement. Secondly, a concern that retail investors, average folks, families and seniors here in the province of Ontario put their investments at risk by putting faith in the OSC. Is the Canadian discount fictitious, or are you concerned about it?

Mr. David Wilson: I don't want to overcite the World Bank study, but the World Bank study said that Canada ranks fifth in the world in investor protection, so that's a pretty credible source. However, I wouldn't pretend that everything is perfect in enforcement in Ontario. There has been talk in speeches and academic papers about whether there's a Canadian discount, i.e., is the cost of capital higher in Canada because of a perceived weakness in the enforcement structure?

The Allen report, which was the report that the study that was referred to was done as a background paper to, concluded that there was no convincing statistical evidence that could prove that there was a Canadian discount, so it's a very difficult thing to prove.

The previous governor of the Bank of Canada, David Dodge, made some speeches where he said the Bank of Canada's research indicated there might be a higher cost of capital in Canada for whatever reason, and it could be

as much as a quarter of 1%, but I've never seen the detailed study.

So the Canadian discount has been talked about a lot, and we're constantly aware, as I said in my remarks, of the criticism and oversight and comments people make about enforcement in Canada.

Mr. Tim Hudak: Do you think it's a fiction or do you think the jury is out?

Mr. David Wilson: There's a perception that enforcement in Canada is not as rigorous as it is in the US.

Mr. Tim Hudak: Let's look at some recent examples: It is widely believed that the OSC and the Canadian authorities dropped the ball on the Conrad Black situation; Bre-X Minerals, which is now a decade of investigation and courtroom battles, and nobody was found to be accountable for a multibillion-dollar gold fraud; YBM Magnex, the stock market scandal—the FBI believe directors have links to the Russian mob, the OSC set light fines and penalties; Michael Cowpland of the Corel Corp. fined only \$1 million for allegations that he had \$20.4 million sold in advance of bad earnings; Andrew Rankin, in a highly controversial case, got a veritable slap on the wrists of \$250,000. Isn't this an embarrassing record at the OSC?

Mr. David Wilson: I could spend a lot of time talking about each of those cases, Mr. Hudak. Why don't I respond, just in part, by talking about a couple of them, as instructive of some of the points I made earlier.

You mentioned the Black case, a very high-profile case in the media. There is, at the moment, and has been for a number of years, an open matter in front of the OSC's tribunal on Black and Radler and Hollinger Inc. That matter has been deferred many times, pending the outcome of criminal prosecution in the US. The reason I raise it is to dramatize the difference I spoke about in my opening remarks. There's constant confusion between regulatory enforcement, which is what we do, and we are pursuing with Black and company, and criminal enforcement, which is done by the criminal authorities. In the United States, it was not the SEC that put Conrad Black in prison; it was the US criminal justice system. So—

Mr. Tim Hudak: And that's just a short list, I say with respect. Isn't that a devastating indictment of the OSC and our system, that many high-profile cases have, quite frankly, caused concern about investing in Canadian markets and underlie the thought of the Canadian discount? That's a lot of high-profile cases in a short period of time.

Mr. David Wilson: But, as I say, to compare the OSC's role in those cases with the criminal justice system in the US, I believe, is an inappropriate comparison.

I'll comment on one other case you raised, Mr. Hudak: the Andrew Rankin case, which is now a completed case. He was banned for life from ever operating in the business that he had earned his living in in Canada before. He'd made well into seven figures per annum, and he's banned for life from ever earning a living in that business again. That's the sanction that we imposed on him.

Mr. Tim Hudak: But with that kind of volume, he gets a \$250,000 slap on the wrist. That's such a light slap, it probably didn't even leave a red mark, in the Rankin case.

Mr. David Wilson: Banning him for life from participating in the Ontario capital market is not a minor sanction for someone who has earned their living in that market.

Mr. Tim Hudak: A recent Bloomberg news study prepared by Port Hope-based Measuredmarkets Inc. showed that in 33 of 52 large Canadian mergers in 2006, there were signs of aberrant trading just before the mergers were publicly announced. That's a rate of 63%. What kind of red flag did that raise with you and what did you do about it?

Mr. David Wilson: Every case of unusual trading before an announcement—Peggy described this a bit earlier—is identified by the surveillance team at IIROC. Every case of unusual activity is shipped over to our insider-trading unit, and if it's an Ontario activity on the Toronto Stock Exchange, we pursue it. We open a file and we see if we can find evidence of improper insider trading. Insider-trading cases are very difficult to prove because there are no eyewitnesses, but we pursue every case of unusual trading that's brought to our attention.

Mr. Tim Hudak: According to your annual report, between 2005-06 and 2007-08 the number of staff at the OSC has increased from 378 to 429. That's a 13% increase. The number of staff making \$100,000 per year or more has increased by 29%.

When I look at your enforcement figures from the same annual report in that time frame, they have actually dropped. The number of proceedings, individual respondents, corporate respondents, sanctions, have all dropped.

You had far more staff but far less enforcement. What's going on?

Mr. David Wilson: As we've spent a fair bit of time today talking about enforcement with a number of the questioners—we have been putting more resources into what I refer to as the compliance-enforcement continuum. Compliance is oversight before misconduct occurs, and enforcement is pursuit after potential misconduct has occurred. As you point out, human resources have been increasing in the last few years as we have bolstered the capabilities of the OSC in those two critical areas. We've had a lot of criticism about our enforcement activities, some of it justified, some of it not. We are responding by putting resources to work to improve our performance. I don't see anything inappropriate about that. That's the reason for the increase in those numbers.

Mr. Tim Hudak: Chair, how much time do I have?

The Chair (Mrs. Julia Munro): About 30 seconds.

Mr. Tim Hudak: I do feel strongly that 20 minutes per party is quite a small amount of time for the seriousness of the issues that have been raised, I think, by members of all three parties.

I appreciate the chairman's responses. I say, with respect, that it seems like there's a satisfaction with mediocrity at the OSC. I hear generalizations about what

they're doing about it, but I'm not seeing the facts and I'm not seeing the kind of outrage that I think there should be. Actually, I'd rather see the OSC banging on the minister's desk and demanding the right changes, rather than sort of sitting back and accepting this notion of the Canadian discount, as they seem to do far too lightly.

I have some questions around Fund Facts and the paperwork burden, and I'll be quick with this, Chair. I appreciate the document that you're bringing forward to make it much easier for a basic investor to understand mutual funds and other instruments. I do worry about some proposals that would get in the way, between the broker and the individual client: the sign-off provisions. If my broker had recommended a fund to me—not being a particularly sophisticated investor—as an example, is the requirement going to be for me to sign off on that? Isn't that going to cause a lot of delays and be a bit impractical?

Mr. David Wilson: We can be very quick, Madam Chair. My colleague Mr. Ritchie focuses a lot of time on exactly what you're asking about, Mr. Hudak. Larry, could you briefly give an answer?

The Chair (Mrs. Julia Munro): I'd ask you to be brief.

Mr. Lawrence Ritchie: I'll be very brief.

The Fund Facts document and the point-of-sale document and the point-of-sale project really go to the core of some of the questions that were talked about in the first half of the questioning.

It is first and foremost an important investor protection initiative. It is a means of getting meaningful, coherent information to a client, to an investor, prior to making the investment decision. There is no requirement, as proposed, to sign off. It is a way to focus on the adviser relationship, on the information that advisers need to provide to investors prior to making an investment decision. It is an important initiative. I think it's a world-class initiative. It is out for public comment now, as an initiative. It will come back in the form of a rule, which will give rise to further comment. So we're in the consultation stage.

We are committed to seeing this as an important initiative to provide investors with meaningful information at the time that they need it most: before they make an investment decision.

The Chair (Mrs. Julia Munro): Thank you very much. This concludes the time we have available. I want to thank all of you for coming here and participating this morning.

The committee adjourned at 1027.

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Lundi 9 février 2009

Standing Committee on Government Agencies

Agency review:

Human Rights Tribunal
of Ontario

Comité permanent des organismes gouvernementaux

Examen des organismes
gouvernementaux :

Tribunal des droits
de la personne
de l'Ontario

Chair: Julia Munro
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

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GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Monday 9 February 2009

Lundi 9 février 2009

The committee met at 0930 in room 151, following a closed session.

AGENCY REVIEW

HUMAN RIGHTS TRIBUNAL OF ONTARIO

The Chair (Mrs. Julia Munro): Good morning, everyone, and welcome to the Standing Committee on Government Agencies. This morning we are reviewing the Human Rights Tribunal of Ontario. Our first order of business will be to hear the presentation.

Mr. Gottheil, I am pleased to be able to welcome you here to the standing committee. I'd ask you, for the purposes of Hansard, to introduce yourself and those who accompany you, and then you may begin. As you know, you have five minutes in which to make a presentation. Then we will divide the remaining time amongst the caucuses for questioning in specific rounds.

Mr. Michael Gottheil: Thank you very much and thank you for inviting us here to report this morning on the business of the Human Rights Tribunal of Ontario. I have asked Mr. David Draper, on my left, who's the executive director of the tribunal, to join me this morning; as well, Ms. Fanella Hodge, who's directly to my right, the manager of business services for the tribunal; and also Ms. Reema Khawja, who's one of our counsels, to be here today and, if need be, provide some information that they're more familiar with.

As I said, I'm pleased to be here today to report on the business of the tribunal. We've submitted our questionnaire as requested by the committee, along with attachments. We've also included a report that provides some initial statistical information on our caseload and operations for the current fiscal year and, in particular, since June 30.

As you know, the tribunal recently went through a significant transformation. On June 30, 2008, the Human Rights Code Amendment Act came into force. The tribunal is now responsible for receiving and resolving all claims of discrimination brought under the Human Rights Code. In the six months ending December 2008, we received approximately 1,050 new applications and 940 transitional or opt-out applications, in which individuals chose to transfer their commission complaints to the tribunal. Traditionally, the tribunal received only about 150 complaints each year, all of which were matters referred by the Human Rights Commission. We were, until re-

cently, a fairly small tribunal: between about three full-time adjudicators, six to eight part-time adjudicators and about eight staff. The amendment to the legislation has effected a fundamental realignment of responsibilities in relation to the enforcement and resolution of claims filed under the code. This means that the tribunal had to expand significantly in staff and operations. We now have about 50 staff, 22 full-time adjudicators and about 22 part-time adjudicators.

It has also meant that the way individual claims of discrimination are dealt with and resolved is quite different. The tribunal, as a quasi-judicial adjudicative body, is mandated by statute to deal with applications filed by individuals fairly, expeditiously and on the merits of the application. The code requires that, for all applications that are within the tribunal's jurisdiction, we must provide the parties with the right to be heard orally before finally disposing of the matter and we must provide written reasons when finally determining an application.

Our process provides the parties to the dispute an opportunity to engage in mediation. Mediation is entirely voluntary. Our role in mediation is to facilitate the parties' interests and efforts to reach a settlement where they freely choose to do so. Where the parties do not choose mediation or when mediation does not result in a settlement, the matter will be scheduled for a hearing.

The tribunal has a robust triage and case management component which allows the tribunal to hear from the parties and assess what procedures will best ensure a fair and expeditious resolution of the application. This may include, for example, determining whether there are significant issues which need to be decided at a preliminary stage, the number of witnesses, or the length of the hearing that is required to fairly decide the dispute. The approach ensures that both the tribunal's and the parties' resources are focused on the most effective manner in which to reach a fair outcome based on the facts and the law.

So where are we? We currently have three streams of cases, and I'll talk a bit more about them if you choose to ask me some questions. We have the new applications, which are applications filed under sections 34 and 35, which are commission-initiated applications. As I said earlier, as of December 31, we had 1,051, and by the end of January we had close to 1,270 new applications. In addition, we are responsible for transitional applications. These are applications by individuals who had or have

complaints outstanding at the commission. Individuals were able to transfer their complaints to the tribunal beginning June 30, and have until June 30, 2009, if they wish the matters to be dealt with.

The Chair (Mrs. Julia Munro): I'm sorry; you have exhausted the five minutes. We'll begin, then, with our questions. To the government, Mr. Zimmer.

Mr. David Zimmer: The tribunal has been up and running formally since June 30, 2008. That's about seven months. I appreciate that that's a partial year of a very important year, a start-up year, when you're getting all the pieces in place and are developing the practices, the model, and staffing and so on. I realize that not having the full year under your belt, there are no first-year formal statistics and all of that information that would normally follow and will in the future follow at the end of every year, but can you give us a sense, as the chair, of how things are working out these first seven months? What has the experience of the tribunal been during this seven-month set-up period?

Mr. Michael Gottheil: Well, as I was going to get to, and I appreciate that I ran out of time, the tribunal deals with three separate streams of cases, which makes our task challenging, but one that we meet.

The first is new applications that are filed under the legislation directly by individuals. As I said, we had at the end of January about 1,268 of those. We had issued, I think, about 250 decisions out of that stream, most of them interim decisions. About 60 of them either finally dealt with the matters or deferred the application. We have a process where we defer applications in which the matter is being dealt with in another forum—for example, a grievance arbitration—in order to avoid duplicious litigation. We held about 200 mediations and resolved over 105 applications.

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We also deal with a transitional stream. As I was mentioning, these are cases in which individuals had complaints outstanding at the commission that had not been dealt with by the commission. Individuals have the right, between June 30, 2008, and June 30, 2009, to transfer those applications to the tribunal if they want them dealt with. As of December 31, we had over 940 of those. Again, we held a number of mediations and hearings to resolve those.

Also, we have what was traditionally our work at the tribunal, which is commission-referred complaints. As of December 31, there were about 750 of those matters. When I say "commission-referred complaints," these are not the transition cases that are transferred by individuals, but cases that the commission had investigated and decided to refer for a hearing to the tribunal. We had about 750 open complaints. In reality, because there were a number of complaints that were grouped, there are about 275 cases before us. We continue to hold mediations and hearings in those.

So when you ask how we're doing, I think we're doing pretty well. As you mentioned, it's early days, but the initial feedback we're getting from the community,

the people who actually use the tribunal, who appear and file applications, come to mediations, hearings and so forth, seems to be positive. I appreciate that the feedback at this point is anecdotal, but nonetheless we've had extremely positive feedback. People feel that the tribunal is professional, responsive and fair, and that our decisions are understandable, readable and seem to make sense. So we're cautiously optimistic and pleased.

Mr. David Zimmer: My next question is—and again, I appreciate that you've only got seven months under your belt; you have the set-up pains and all of that sort of stuff. Are you in a position, after seven months, to get some sense of what your early challenges will be in achieving the mandate of the tribunal and to have some thought about plans to meet those challenges, as you've been able to develop them for seven months?

Mr. Michael Gottheil: I would say that the thing we're always keeping an eye on at this early stage is the volume. Of course, under the old system, the commission had the responsibility of receiving inquiries and claims and so forth. It was a very different system.

As I mentioned in my opening, the new system doesn't move the responsibility of the commission to the tribunal as much as it realigns the responsibilities. There is the legal support centre that takes inquiries and provides initial advice to assist people. People can file on their own. We see that there seems to be a fairly high volume of people who have filed applications on their own, not having representation, which in some ways we see as a good thing; it indicates that our process is accessible. Of course, as we move through the system, we will see how the volumes play out.

The other challenge, of course, will be the transitional cases. There is a high volume of transitional cases, and again, we don't really know at this point the numbers that will eventually transfer over from the commission.

Mr. David Zimmer: I want to read to you from a letter that I have from Mary Cornish. As you know, she's one of Canada's and one of Ontario's leading human rights lawyers. It's a letter addressed to the clerk of this committee, Mr. Arnott. I just want to quote from the letter and then ask you a couple of questions about the quote.

She says, at the second paragraph of the letter, "The tribunal was given a very difficult and complex task by the Legislature with the passage of Bill 107. It had to transform its procedures in order to take on a vastly increased mandate and workload, from about 100 to 150 complaints annually to an estimated 3,000 applications. It had to create a customer-service-oriented administrative justice tribunal. Despite significant resource constraints, the tribunal has thus far executed this task successfully with vision, innovation, skill and diplomacy. It should be recognized for its achievement in reorienting its mandate and services towards implementing the promise of human rights justice called for in Bill 107."

She refers to the challenges of creating a consumer-service-oriented tribunal, the consumers being, of course, the people of Ontario. Can you comment, aside from the

legal issues involved in the work of human rights, on what sorts of things you are emphasizing to achieve this consumer-service-oriented administrative tribunal? That may be an appropriate question for the administrative side, for your CEO, but I'll leave that to you to—

Mr. Michael Gottheil: I would say at the outset that our core values and mandate certainly are focused on recognizing that our role, under the statute, is to resolve applications that are brought before us. The values that I and the senior staff try to instill throughout the organization are to be consumer-focused, to recognize that our role is to provide and facilitate the resolution of disputes—that's essentially what human rights complaints are, disputes—that are put before us in a fair, just and expeditious way.

On the service side, if I can call it that, certainly our staff—I know Ms. Cornish wrote the letter; it's really about our staff. To a person, I can report to this committee that they exhibit the highest standards of integrity and public service, and they should be commended, in the first seven months, as it really has been a trying time. But everyone is focused on that mandate, which is to resolve the disputes that are put before us.

Again, the focus is to understand that these are disputes between parties and they're put before us, and we need to resolve them in a fair, equitable and timely way. The other thing is, we've tried very hard, in the development of both our procedures, but also the materials that explain—our forms, our guides—to make those accessible and understandable, in plain language. Again, it's very much focused on the consumers, the public. As opposed to what we need, it's what the community of users needs to effectively participate in the system.

Mr. David Zimmer: Just following up on that, Ms. Cornish, in her letter on page 2, the penultimate paragraph, says, "In carrying out its mandate, the tribunal carefully balanced four important goals." I'm just going to read to you how she's described each of the four goals, and perhaps you can comment on your approach to each of those goals.

The first goal was "ensuring a participative and responsive implementation process"; the second goal, "preserving the tribunal's independence and neutrality as a quasi-judicial administrative body"; the third goal, "expeditiously implementing administratively the reforms to meet the legislative time frame"; and last, "ensuring the new process would be user-friendly, accessible and deliver human rights justice."

Can you just take a minute and comment on each of those goals?

Mr. Michael Gottheil: With respect to the first one, which is the consultative process, almost immediately following the introduction of the legislation in the spring of 2006, we got out into the community. We set up meetings and discussions and listened to a broad range of interests and groups and individuals in the community: members of the bar who practise human rights law, both on the complainant and the respondent side; the Ontario Bar Association; we spoke with experts in the adminis-

trative justice community; we spoke to and listened to individuals and organizations that advocate or represent people who most often deal with the code; and other tribunals across Canada. In addition to that, we set up a number of meetings across the province to deal with both general and specific aspects of the new process, whether it was accessibility or mediation processes and so forth. The ministry had set up a number of public forums across the province in which we participated, along with the Human Rights Commission and the legal support centre.

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So it was almost an 18-month process that we went through. Our focus was user-friendly, our focus was for the public, so it was very useful to be able to listen to that. Once that was done, we incorporated that and developed draft rules which we then submitted and posted on our website and sent to over 500 people who had participated in all of those activities over 18 months, got feedback on those, and eventually came up with our rules.

I have to say it was enjoyable for me, in a sense, to be able to get out there. It was a real opportunity. That consultation not only helped us and informed our rules and procedures, but it continues to inform how we do our work. When we have meetings and talk about challenges that we face, we think back to—and I tend to remind the staff—what we heard from the community, because we want to have that as our focus.

With respect to independence, that's pretty basic. The tribunal is a quasi-judicial agency. Our role, like a court, is to decide disputes based on the facts and the law. Obviously we need to, again for the public's sake, make sure that our role is integrated and in some sense seamless with the other agencies in the human rights system, those being the commission and the legal support centre, so we work with the ministry on some of that. But ultimately, how we set up our processes and the decisions on any particular case—we're quite conscious and protective, if you will, of our independence.

Expediency: I'm not sure whether Ms. Cornish is saying that we were expeditious in how we developed our process. We had certain timelines we had to reach, and the government, of course, set the proclamation date and we worked toward that. Again, we felt that timeliness of resolution of any legal disputes is fundamental to access to justice, to fairness.

Finally, when we talk about being user-friendly, and I think I spoke about that already, we continue to want to be responsive. We're in the process of setting up a stakeholder advisory committee of users, so we're moving forward on that. I continue to go out into the community and speak to law firms and organizations, community groups. I've been up to the north and so forth. It's all part of an ongoing process of development.

Mr. David Zimmer: So with that under way in the first seven months of the tribunal, can you gaze into the crystal ball and get some sense of how you expect the remaining five months to unfold before you've then finished your first year?

Mr. Michael Gottheil: Not really. I'm not sure that would be particularly useful. We obviously are keeping our eye on things like statistics, feedback and comments, but we have another five months, and then we have another year, and then there are another 10 years. This is, as I say, an ongoing process. Of course, we always keep an eye on not only the numbers but the kinds of complaints that we get, whether they're mostly employment-, disability- or race-related, and whether we get a lot of more complex cases, or are they mostly, as we've found in the past, fairly straightforward cases, which of course will inform how we spend our resources and how we focus our processes.

The Chair (Mrs. Julia Munro): Time is of the essence—

Mr. David Zimmer: Thank you, Chair.

The Chair (Mrs. Julia Munro): And so we must move on. Ms. MacLeod.

Ms. Lisa MacLeod: I'll be splitting my time with our Attorney General critic in the official opposition, Christine Elliott, the MPP for Whitby—Oshawa.

Good morning and welcome, Mr. Gottheil. I understand you're also from the city of Ottawa, so I'm very happy to have you here today. The parliamentary assistant for the Attorney General, who is also responsible for the tribunal, made a great case for having you come back in five months' time to talk to us about an entire year's worth of work. I think I'd like to call you up on that. I think he made an excellent case of justification to have you appear before this committee again.

I just have a couple of quick questions before I defer to my colleague, who certainly has more experience in this. It does indicate, though, in our legislative report that you do not provide any information on your website concerning the disposition of the complaints referred to it by the commissioner, and the tribunal also no longer posts decisions on its website. Could you provide us with an explanation?

Mr. Michael Gottheil: I'm not sure I understand the first part of your question. On the second part of the question, all our decisions are publicly available. What we did—and many tribunals have done this—is, rather than create our own database of decisions, we submit decisions to CanLII, which is a cross-Canada reporter service where there's a much greater ability for users to search. So all our decisions are publicly available, are posted. On our website there is a link that says "Decisions," and if you click on that link, rather than going to an internal database, it simply refers you to the CanLII database, in which you can enter the case name or search by subject. So, in fact, our decisions are publicly available.

Ms. Lisa MacLeod: Okay. I appreciate that—

Mr. Michael Gottheil: On the first one, I'm not sure I understand the question.

Ms. Lisa MacLeod: Let me expand on it. I think that we all know that with the new system in place here with the human rights sector here in Ontario, you've accepted cases, whether they are transition cases from the Ontario

Human Rights Commission, in some cases where the Ontario Human Rights Commission was able to continue on with its work, and I'm wondering if any of that information has been made available to you. I understand that as of December 31, 2008, the commission no longer has that ability, but I'm wondering if you can shed any light on the cases that remained with the commission, and if you can shed any more light on the transition cases that you've received.

Mr. Michael Gottheil: You're quite right. There are two streams with respect to cases that originated, if you will, at the commission. So there are transition cases. The transition cases are cases in which individuals who had filed complaints at the commission but the commission had not dealt with—so either investigated and decided not to refer, dismissed or that weren't settled at the commission level, or that weren't referred to the tribunal or that weren't withdrawn, so they were outstanding at the commission. Starting on June 30, 2008, and running until June 30, 2009, the legislation says to those people, "You have that one-year window in which to transfer your case to the tribunal if you want it dealt with." As I said, as of December 31, we had received 940 of those cases, and I don't have the exact commission statistics as to how many on December 31 remained in their inventory. I understand it's in the neighbourhood of 2,000, but I don't have that specific statistic for you.

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Ms. Lisa MacLeod: So given your new mandate, and the relatively expansive size of your office today compared to what it was last year, I think it would be fair to this committee to sort of look into the Ontario Human Rights Commission's application of those current cases. And I'm wondering if you think it would be a benefit for us. I know that Chief Commissioner Barbara Hall has actually submitted a letter to us, but do you think it would be relevant for this committee to actually speak to her about those outstanding cases that were left with the ORC—I want to say "ORC" because we have the Ontario Racing Commission here tomorrow—the Ontario Human Rights Commission so that we may get a bigger picture? There has been some concern, and I know my colleague will speak to this a little later on, about the backlog just being shuffled from one office to another. That was a big concern that, as you'll recall, the official opposition raised during the committee hearings of Bill 107. I wonder if you think it would be relevant.

I know that in your questionnaire you have highlighted that, and I will quote, if I can find the relevant place here, that "the following are agencies who have formal responsibility in matters dealt with by the tribunal, the Ontario Rights Commission and the Ontario Human Rights Legal Support Centre." I'm wondering if you think it would be relevant for us to have both Raj Anand and Barbara Hall in here to highlight that, perhaps with you coming back after you've heard the dispositions today.

Mr. Michael Gottheil: I wouldn't be so presumptuous as to tell this committee what is important or what

they should be looking into. Your role, and I respect it entirely, is to review from time to time boards, agencies and tribunals and their work, and no doubt there are a variety of considerations which play into which of those agencies you look at and at what time period. I would say, just in response to your question, that at this point—again, I said my understanding is that there are roughly 2,000 cases, complaints, still at the commission; the commission no longer has any jurisdiction under the legislation to deal with those. So they're sitting there.

Ms. Lisa MacLeod: Yes. I just think maybe the question I should have asked is, do you think we, as legislators, can effectively review the Human Rights Tribunal of Ontario without reviewing the other two agencies?

Mr. Michael Gottheil: Yes, I think you can. Our role is—we have a business role, in a sense, right? Yes, we have a role within the system, but our role, and this ties back to the question earlier about the independence, is very specific, in a sense, and that is that we resolve applications that are put before us. We have a process and we have a business plan and we have rules and we deal with the parties. We don't involve ourselves in policy questions that, for example, the commission might engage in, or considerations of how to deliver legal services at the legal support centre. Those are legitimate discussions that individuals may have and they may be legitimate for you to look into. But in terms of reviewing our mandate and our business, if you're asking me questions about how we're dealing with our responsibilities under the legislation, I can answer those questions.

Ms. Lisa MacLeod: Okay. Thank you, Mr. Gottheil. I'll now defer to my colleague.

Mr. Michael Gottheil: Thank you.

The Chair (Mrs. Julia Munro): Ms. Elliott.

Mrs. Christine Elliott: Thank you, Mr. Gottheil. I do appreciate your being here today to speak to us about the tribunal. I do have five broad categories of questions I would like to ask you. Perhaps if I'm not able, within the time that we have allowed in the first round of questioning, I can get to them in the second round.

The first area relates again to the backlog, as my colleague Ms. MacLeod was indicating. If I'm correct in the numbers, currently you have on your caseload a little over 2,000 cases, of all things combined—2,200, something in that area? Is that correct?

Mr. Michael Gottheil: Sorry. We have 940, and I think there were another 80, so just over 1,000 already at the tribunal. Again, I heard about this statistic; I have not received an official report from the commission, but my understanding of it is somewhere around 2,000 that are still at the commission for hearing.

Mrs. Christine Elliott: Two thousand. So potentially there could be close to 4,000 cases—

Mr. Michael Gottheil: Three thousand.

Mrs. Christine Elliott: Three thousand. Okay. Do you have a specific plan in order to deal with that so that you don't end up with your new cases being further backed up while you're dealing with the old cases, or how are you administratively dealing with that?

Mr. Michael Gottheil: We absolutely have a plan, because we recognize, as you quite rightly point out, that there could be a risk in the new system, and also evaluating whether the new system actually is working and whether our processes that we've designed for the new system are working. So what we had done in our development process, if you will, is to set up a separate string to deal with the backlog cases. There are separate rules of procedure for those, because of course those cases are different. They were filed with the commission; they may have gone through an investigation or not; the parties may have engaged in mediation or not; so they're really at a different stage and are a different kind of complaint. So we had different rules of procedure.

Secondly, the legislation, for the cases that came over between June 30 and December 31, specifically mandated us to create rules that were expeditious. All our processes are expeditious, but the legislation said "expeditious" for those cases. So we had a highly expeditious process for those cases.

The other thing that we've done is we've dedicated resources—administrative and adjudicative resources—specifically to that project. That includes an administrative team; as well, we've dedicated four full-time adjudicators to that stream and a number of the part-time adjudicators are dedicated to that stream. We're tracking that stream of cases separately to be able to report and assess—to track that, because we appreciate, as you point out, that it's a very difficult challenge.

Mrs. Christine Elliott: Thank you. One of the assumptions to the success of the new system was that approximately 80% of the complaints filed would come through the legal support centre. Are you finding that that's the case?

Mr. Michael Gottheil: No. I know Mr. Draper has that statistic. Was it 20%?

Mr. David Draper: It's more in the order of 20%. We talk to the legal support centre, so there is some sense that the way they're doing their business is that they are assisting people to complete applications but they are not filing them. We suspect—and we don't have the answer; this is an example of something that someone else might be able to tell you that we can't—that a number of the applications—hundreds of them, probably—are cases that the legal support centre has had an involvement in, but they don't appear in our system as counsel. But the number we're seeing as counsel is more like 20%.

Mrs. Christine Elliott: So that could potentially be a problem, then, could it not, as you move forward?

Mr. Michael Gottheil: I guess I would ask, a problem in what sense?

Mrs. Christine Elliott: One of the things that we discussed extensively during the Bill 107 hearings was the fact that—and it was stated by many government members that everyone who needed it would have full legal representation through the legal support centre. Yet it would seem that if only 20% are coming through the legal support centre as counsel, and full legal represen-

tation was indicated during those hearings, that is not fulfilling its mandate in that respect.

Mr. Michael Gottheil: Again, it's not really my role or our role at the tribunal to comment or to even engage in the discussion about Bill 107 or those kinds of things. I can say, from the point of view of an agency that works in the tribunal, that works in the justice sector, that provides a legal process for resolving legal disputes, the issue of self-represented litigants is one that the courts and other agencies deal with all the time.

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I think there's an understanding that some people choose to be self-represented. I was speaking to our registrar the other day when we saw these statistics about the self-represented individuals. He said that he speaks to people and they say, "Well, don't tell me to go see the legal support centre. I don't want to; I don't want representation." So there are some people who choose, for whatever reason, to be self-represented.

I think more importantly from our perspective, what we want to make sure of—and why somebody might be self-represented is not really our business. What we need to make sure of is access to the system, that the hearing is fair and outcomes are just and are timely, regardless of whether somebody is represented or not.

The way I always looked at it is that if the legal system is entirely dependent upon whether somebody is represented and who the lawyer is, we've got a problem, because the outcome should be based on the facts and the law. That's not to suggest, of course, for people like yourself who have worked in the legal system, that there aren't complaints and applications and disputes, both in human rights and more generally, that are complex. Proper representation by people who have subject area expertise—because it's not just if you're a lawyer; subject is critical. But what we've found at the tribunal and what I've found over the past close to four years that I've been the chair and in my practice 20 years before that, is that there is a range of types of disputes. There is a range of parties; there is a range of circumstances. I don't think it's accurate necessarily to say that in every single case, somebody needs to be represented or the outcome will not be fair and just and timely.

Mrs. Christine Elliott: But wouldn't it be important to know whether people would have liked to have a lawyer and couldn't get a lawyer, rather than, "We think maybe some people just choose not to be represented"?

Mr. David Zimmer: On a point of order, Chair, and I spoke to this earlier in our session: There are three entities in the human rights, and they're all quite separate. There's the Ontario Human Rights Commission, there's the Ontario Human Rights Tribunal, and then there's the legal support centre. This committee has chosen to look into the work of the tribunal. As Mr. Gottheil has in my view rightly indicated, the work and practices and policies and all of that stuff having to do with the commission are quite a separate matter, as the work, policies and practices of the legal support centre are quite distinct entities. We're dealing with the tribunal

here, and I think we should limit our questions, examination and comments to the tribunal rather than the other two bodies that are not before this committee.

The Chair (Mrs. Julia Munro): Thank you very much. We have only a moment left. I'm just going to let Mrs. Elliott finish the question that she has, and then we'll move on.

Mrs. Christine Elliott: Madam Chair, if I could, before I go on, though, respectfully submit that the status of persons appearing before the tribunal, whether they are represented or not and whether they wish to have representation, is one of the key elements with respect to the operation of the tribunal. I would submit that these questions are relevant.

Just following on the same line, with respect to the applications that people file before the tribunal, have you had any problems with people who are self-represented with respect to procedural problems with application filing?

Mr. Michael Gottheil: I appreciate the questions, the concerns and the considerations about self-represented litigants. As I say, legal courts and tribunals generally are confronted with these issues. As I said before, I think there's a consensus in the legal community, the courts and the justice system that it's a more complex, multi-dimensional question, and the answers are more complex than simply saying, "Well, let's make sure everyone has a lawyer." That doesn't necessarily achieve access.

You asked about the application process. I can say that we're quite proud—and it's early days, but at that level we're actually quite pleased to see that all of the work we did on a plain language, plain design application form—we did a lot of work on that, trying to draw out information—seems to have worked. As we've said, I think that about 60% of the applicants who have filed applications are self-represented. We have a process by which, when somebody files an application, we review it for completeness. If it's not complete, we will send it back with instructions about the missing information. Through that process, there have only been about 35 cases that remain so incomplete and unclear that we cannot serve them on the respondents and deal with them in an informed way. So at least at that level, I'm happy to report the process seems to be working well equally for represented and self-represented people.

The Chair (Mrs. Julia Munro): Thank you. We must move on. Ms. DiNovo.

Ms. Cheri DiNovo: Thank you for appearing before us. I want to pick up on some of the points Mrs. Elliott made first and foremost by quoting the former Attorney General, Michael Bryant, at the first reading of Bill 107. He said, "We would ensure that, regardless of levels of income, abilities, disabilities or personal circumstances, all Ontarians would be entitled to share in receiving equal and effective protection of human rights, and all will receive that full legal representation."

So, clearly Michael Bryant at the time felt it was critical that all could at least have access to equal legal representation. On that point, the question of self-rep-

resentation versus legal representation, I would buy into perhaps some of what you've said if it's equal on both sides; in other words, if respondent and complainant both were self-represented. So I'd like to know, for example—I'm going to break it down because I'd like the actual numbers here—of the complainants who filed complaints with the Human Rights Commission under the old code and then opted between June 30, 2008, and December 31, 2008, to transfer their cases directly to the tribunal, in how many cases was the complainant not represented by a lawyer, as contrasted with the respondent?

Mr. Michael Gottheil: I don't have that information. I would say that representation may occur in a number of ways, so it's not just by a lawyer. There are paralegals who appear before us who are licensed by the law society and who actually have expertise in human rights, there are other individuals who may represent applicants, but I don't have those statistics for you.

Ms. Cheri DiNovo: But would you say that—obviously, if a respondent has a lawyer or a paralegal and a complainant does not, then one might be a little concerned about the quality of the representation before you.

Mr. Michael Gottheil: Again, I apologize. First of all, I don't have statistics for the 53(3) transition cases, the percentage of representation amongst applicants. Nor do we have statistics with respect to the level of representation amongst respondents. In fact, we find—I don't want to say many or a lot or a little, because I don't have the statistics, but there are cases, and it's not the rare case, where respondents are self-represented.

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But to your question, that I can answer, which is the tribunal process, do I think there is an unfairness simply because in a case, one or the other side is represented or self-represented? I don't think so. That's not to say that in every case there wouldn't be an unfairness, or in any particular case there wouldn't be an unfairness. As I said before when I was speaking to Mrs. Elliott's question, there are complex cases that come before the Human Rights Tribunal, complex factually or legally. But what we find is that most of the cases that come before us are not particularly complex, factually or legally; they're straightforward.

The other thing I should say—and this is where I'm speaking more about the tribunal and the work that we've done to ensure that our process is accessible, that hearings are fair and outcomes are based on the facts and the law, regardless of whether people are represented or not. We've done a lot of work on that. That includes our application forms, as I was saying before, but it also deals with adjudicator competencies. We have done a lot of work, both in the recruiting process and the training process, at mediations and at hearings, to sensitize and to train adjudicators and mediators to be able to deal with self-represented people—

Ms. Cheri DiNovo: So you would disagree with Michael Bryant's comment, then.

Mr. Michael Gottheil: I don't know what—

Ms. Cheri DiNovo: I read it at the beginning. He said that all Ontarians should be entitled to share in receiving

equal and effective protection of human rights, and that means they will receive full legal representation if they so desire.

Mr. Michael Gottheil: If I understand Mr. Bryant, he was speaking to a different part of the system, which was the—

Ms. Cheri DiNovo: He was speaking to Bill 107.

Mr. Michael Gottheil: I understand, but he was speaking to a different part of the system. If I understand your question and what he was saying, he was speaking to that part of the system that relates to access to representation. I'm speaking to the tribunal, which is—you asked me a question about fairness of outcomes, so I'm speaking about a different thing.

Ms. Cheri DiNovo: Yes. I think he implied—

Mr. David Zimmer: On a point of order, Chair: We're back to the earlier point that I made, that there are three entities in the human rights world. There is the Human Rights Commission, stand-alone; the Human Rights Tribunal, stand-alone; and the legal support centre, stand-alone. This committee is dealing with the tribunal, and those are the issues to which Mr. Gottheil is speaking. We should direct our questions to the work of the tribunal, not the work of the centre or the commission.

The Chair (Mrs. Julia Munro): Thank you. I'm going to allow the question to continue.

Ms. Cheri DiNovo: And if I could have some time—

The Chair (Mrs. Julia Munro): If I think that you've strayed, I will certainly follow up.

Ms. Cheri DiNovo: Absolutely, because we're speaking about the fairness of the tribunal, and this speaks to the fairness of the tribunal.

On another note just for a moment, I introduced a bill, supported by Égale and the Trans Health collective, to add the words "gender identity" to the Ontario Human Rights Code. That bill was supported by Barbara Hall in the pages of the Toronto Star and since followed up with a letter. I would ask, would you support that as well, that "gender identity" be added to the Ontario Human Rights Code?

Mr. Michael Gottheil: It's really not appropriate for the chair of a tribunal or a judge or the Chief Justice or anyone who has an adjudicative or quasi-judicial position to comment on policy choices that the government or the Legislature may make. So it's not appropriate for me to answer that.

Ms. Cheri DiNovo: Okay. Barbara did, and I honour her for it.

To get on to the applications that are filed electronically, we've heard that there are some problems with the case management software that have been causing problems for you at the tribunal. Can you describe what kinds of problems the software has caused?

Mr. Michael Gottheil: I'll let Mr. Draper answer. As with any start-up, and for anyone who has been familiar not only with a start-up, but, more particularly, a fairly complex case management system which needs to be customized for the particular processes of the tribunal,

there's always work to be done to customize, but we're working on that. I'll let Mr. Draper speak to some of the particular challenges.

Mr. David Draper: Sure. I'm happy to. We did identify that as a problem in our materials and it has been a problem for us. The task of setting up the tribunal was—although there was lead time on the consultation, the implementation of some of this stuff seemed very tight. The case management system was being designed on a tribunal whose processes were being developed, and that's a tall task.

I think part of the issue was that the case management system was intended to do quite a bit. With the advantage of hindsight, perhaps we should have been a little more modest in what the case management system was intended to do. That said, we are continuing to work with the vendor of the case management system to improve its functionality, the areas that are not as functional as we had hoped and expected—we've developed workarounds. The cost of the workaround is that it takes more staff time. It's more paper-intensive; we're more paper-intensive than we expected to be. Some of the steps of the process are more time-consuming.

The electronic filing that you've raised specifically is relatively straightforward. The system was meant to get the information electronically directly into our database. Instead, that's now a two-step process. We receive the information electronically and then we upload it into our system. It is somewhat more time-consuming but that piece of it is not a dramatic problem.

Ms. Cheri DiNovo: So in dealing with the effectiveness, because one of the reasons for the shift with Bill 107 was backlog, can you realistically say that you're not going to be facing a backlog with those kinds of software programs right out of the gate?

Mr. David Draper: Well, it doesn't help, and I'll go back to Michael's answer, which is that we're watching the numbers carefully. I mean, backlog obviously is a big concern for us, and I'm sure for you as well. We're tracking those numbers and trying to project ahead about how we're doing.

It's early days. We are working through the first round, if you will. We're working through the mediations and we're just getting to the hearings. Administratively, we're keeping up. Adjudicatively, we're watching how those numbers are looking. Clearly it's a concern that we not get ourselves into backlog.

The Chair (Mrs. Julia Munro): All right. Thank you. Yes—

Mr. Lorenzo Berardinetti: Thank you. Good morning to all the members present today from the Ontario Human Rights Tribunal. My question is a very simple one. I was reading through some of the information here and listening, as well, to your presentation and your answers to questions. I want to ask about the workload, and the workload of the tribunal looking into the future. I know right now you're still dealing with transitional applications and commission-referred complaints, but six months or a year from now, how do you see your work-

load as being: the same as it is now, increasing or decreasing, or would it be, "I don't really know"?

Mr. Michael Gottheil: Certainly, for example, taking the commission-referred case stream—I mentioned that there were 750 complaints; really there are 275 cases—I've actually assigned one of my more senior adjudicators to look at that and manage and track that. These are cases that the commission referred, that the commission has carriage on. There are a number of those cases that are pending settlement, for example, so I think that number is lower. We will not get any more cases in that stream.

I am waiting for a report later this week from Ms. Reaume, who is one of our vice-chairs that I assigned to take a look at that, on estimates of how long it may take to finish those cases. I'm hoping that we can get them done within a year.

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Part of that obviously depends on the resources we have, though I'm firmly committed to putting the resources in to get those cases done. But part of it will depend on the nature of the cases. Some of those commission cases are highly complex cases, and the parties themselves may wish—and the nature of the cases may require—longer hearings than, for example, many cases in the new stream. We're going to set a time frame and try to work towards that time frame.

Likewise, in the backlog cases—what we call the backlog cases; in a sense, we don't have a backlog at the tribunal at this point. When I say "backlog," really the more appropriate term is transitional cases, cases that were outstanding at the commission. Again, much depends on how many of those cases come over. Yes, there are potentially 3,000, but there may be less. We know that many of those cases were very old. In some cases, the individuals may no longer wish to pursue the application for a variety of reasons. As of June 30, we'll be better able to assess where we're at with the number of those cases and better able to report to the ministry about the resources required and the expected time to finish and deal with those cases. Certainly, once that caseload is done, then what we will have is just cases in the new stream. Again, it's early days to know what our annual caseload will be there.

Mr. Lorenzo Berardinetti: Just, again, roughly estimate—maybe you don't know the answers, but would it be perhaps around the same as it is now, the workload? Or do you think that once the backlog or transitional applications are dealt with, maybe a year or two years from now, let's say, and the commission-referred complaints are dealt with and you're strictly dealing with new applications, Bill 107-type applications, would you see your workload being the same as it is today or this week, or perhaps a little bit less?

Mr. Michael Gottheil: Really, it's very difficult. What we're planning for, in some sense, is that as the caseload in the new applications under section 34 increases, as it will—we're at 1,200 now and no doubt by the end of the year it will be higher—we will have

worked down the commission-referred cases. The transition cases are a completely different stream that we're tracking differently, and that's a separate project.

Mr. David Draper: If I can just add one thing, we certainly look forward to the day when we're a one-stream tribunal. That'll be wonderful. It's easier to manage.

We're projecting, on the basis of the new applications, that we'll find a level and it will be a fairly steady track of cases. One of the issues that I think people wondered about was whether there was a pent-up body of complaints out there that would hit our door the moment we opened, and we did not see that. For whatever explanation there is, we did not see that early spike. So our prediction is that it will become a more mature system and, unless there's something that happens in society or attention to some issue, we're likely to see, wherever the level ends up, a fairly steady line of new applications that we hope will be brought into a system that has no backlog. The number we've been working with is on the order of 3,000 annually. That's been the projection and we continue to work with that.

Mr. Lorenzo Berardinetti: So the system would then have no more backlog and you'd just be focused on simply new cases coming in.

Chair, I was going to share my time—I forgot to mention—with Mrs. Sandals.

The Chair (Mrs. Julia Munro): Certainly. Mrs. Sandals.

Mrs. Liz Sandals: Thank you very much, and welcome. We've been talking about the fact that this is very much a transitional process. When we look at the dates that are sort of in the record, starting with working with the new act on June 1, 2008, it sounds in some ways as if you were ready to take flight at that point, but my sense would be that, given that we were still doing hearings in the summer about your appointees for adjudicators, in fact it was much later in the process when you were actually fully staffed up to handle all these things.

Could you give us some idea of when you really did have more or less a full complement of staff and you had the systems in place to handle the new input? Maybe you could give us some idea of the growth in capacity at the tribunal, from moving from the old volume, which would have been that third stream of cases you're talking about, to the new transition and new complaints that you will be dealing with in the future, and give us a sense of the change in capacity at the tribunal and when that was available.

Mr. Michael Gottheil: Sure. I'll speak to, if I may, the adjudicators, and then I'll let Mr. Draper speak about the staff level. In terms of the adjudicators, we, as Mr. Draper just said, are working with what we call a steady state, or a new application figure, of 3,000. We did some studies, we did some work, we did some estimating, and we had to come up with some number, and it was based on some research. Of course, we didn't know for sure, but that's the number we were working with. As a result, we planned the budget, adjudicators and staff around

that. We wanted to be responsible, so the next step down was to look at what will be the flow of cases in, so though we may need X number of adjudicators, if and when we get to 3,000, we're not going to have that on June 30. This is one of the reasons we sort of ramped up with adjudicators. As of June 30, I think there were about eight full-time adjudicators, plus myself, and then, as you know, through the summer there were additional persons put forward and recommended for appointment. Now we're at 22.

The other thing we've done: My own thinking was that part-time adjudicators are useful in terms of trying to be responsible and responsive to a greater or lesser caseload because part-time adjudicators go through the same rigorous selection process, but they're per diem appointments. If you need them, they're there and you pay them. If you don't need them, you don't pay them. So there's some flexibility to respond more quickly, which is one of the reasons we had appointed a number of part-time adjudicators.

I'll let Mr. Draper speak to the ramp-up on the staff side.

Mr. David Draper: Sure. I'll deal with the details. In a lot of ways, the ramp-up was appropriate and responsible. Because of the way the cases come in, we didn't need full staffing on June 30. Personally, I arrived in early May. Ms. Hodge arrived on the day we opened, as I remember, on June 30. My early time at the tribunal was pretty much non-stop recruitment of staff. It was a time-consuming but extraordinarily important process for us, and as Michael has said, the results are good. We have a good staff of almost up to the staff levels we want to be at.

Mrs. Liz Sandals: I'm assuming that before you get to this case where you may need an adjudicator, there's a lot of preliminary work that comes first. What sorts of things would that staff be responsible for before it potentially gets to that point?

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Mr. David Draper: Exactly. I don't want to give the sense that nothing happened before we arrived. There was a transition team that set all of this in place, including some of the timetables for hiring. So exactly as you've said, what we've concentrated on is first bringing in the intake staff.

That was a process. The OPS recruitment process takes some time; we did it properly. We brought in those intake staff and trained them. They were ready to go on June 30. Cases came in and were processed, with the challenges of our case management system. That's the order in which it was done. On the staff side, we're up to about 48. We have been looking, depending on some hiring issues currently at play, but our plan was to go to about 12 more by the end of the fiscal year, so there still are some holes that we would like to fill. That's where we are.

Mrs. Liz Sandals: In the large number of cases that have been transferred from the commission, I'm assuming that they almost have to start as if they're intake cases

because, unlike the ones which had been referred for legal resolution by the tribunal earlier, these transition cases could be at pretty much any stage.

Interjection.

Mr. David Draper: Let's do it the reverse way: I can speak to the staffing and then Michael can do the bigger picture.

Again, our staffing is divided so that those transitional cases that are coming over from the commission have a separate staff. That staff has been in place since June 30 to take those cases.

Mr. Michael Gottheil: Yes, and in terms of process, in fact there is a bit of a different process, and as a result the intake resources required to process the transitional cases are actually less than for the new cases. Although the cases that come over from the commission may be at different stages—they may have had mediation, they may not; they may have gone through investigation, or not—they were handled by the intake staff at the commission. So they're at least in a form that the—

Mrs. Liz Sandals: You know what to do next.

Mr. Michael Gottheil: We didn't want to set up a process where we would duplicate what the commission had already done. So the process for transferring a case from the commission is quite simple. Essentially, you put your name, address and the respondent's name and address stapled to your commission complaint, and your application is filed. On the respondent's side, a respondent doesn't have to duplicate the response. Essentially, they would staple the response that they had filed at the commission.

We can actually move those cases much quicker and with less staff resources because, as I said, we didn't want to duplicate both the OPS staff's work that had been done as well as the party's work that had been done at the commission level.

Mrs. Liz Sandals: Good. So you're just taking up where they left off.

Mr. Michael Gottheil: Right.

Mrs. Liz Sandals: You said that there are a number that are still left at the commission. You don't know how many more will come over. Does the commission continue to deal with some of the ones that haven't come over? Is there sort of, at this point you're dealing with the ones that have chosen to come over and the commission is still dealing with some of the existing ones, or is this more a process of waiting for people to decide themselves how they want to organize it?

Mr. Michael Gottheil: Between June 30, 2008, and December 31, 2008, both were happening. Individuals could choose to move their case from the commission to the tribunal, but the commission, though they didn't receive new complaints, continued to process and work mediation and so forth. But as of December 31, the commission no longer has the statutory mandate to deal with them. Those cases in a sense were waiting for people to decide whether they want to move those cases over.

Mrs. Liz Sandals: Or, in the case of very old cases that have been sitting there for a long time and haven't really moved a lot, some of those people may just choose not to move them, to withdraw the application, I presume.

Mr. Michael Gottheil: Perhaps, yes.

Mrs. Liz Sandals: Do I have any more time?

The Chair (Mrs. Julia Munro): You have a minute.

Mrs. Liz Sandals: I have a minute. Just one other question I wanted to ask, because there's been a lot of conversation about fairness in application: You've noted that you have a sense that the legal support centre may be providing support; you just don't have it on the books. As you approach cases that are going to require formal hearings and the person is unrepresented, does the tribunal have the capacity to say to people, "This is going to go to a formal hearing. Perhaps you should at this point go back and talk to the legal support centre"?

Mr. Michael Gottheil: We don't have any power to order the legal support centre to be involved. We will advise individuals that they may want to seek, where cases are particularly complex or there are particular legal issues or there's a jurisdictional challenge—our materials, all our forms and our guides to the process clearly set out for the applicants the sources of legal support and representation, including the legal support centre.

Again, I've been quite pleased with the adjudicative decisions that come out. As I mentioned, there were about 250 decisions in the new stream, some of which deal with cases in which respondents have identified or raised preliminary issues dealing with jurisdiction or the strength of the case, that sort of thing. We can't provide legal support or advice, but in some of those cases we might, in the interim decision, say to the applicant: "This is a significant issue. There are sources of legal representation. Check our guide. There's a legal support centre." So we do identify that.

The Chair (Mrs. Julia Munro): Thank you very much. We'll go on and continue in the next round. Yes, Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here. I had a few questions as I was going through the documentation. The first one that struck me was that the Human Rights Tribunal has never had an audit or an external, outside, impartial evaluation. Is that correct?

Mr. Michael Gottheil: I was appointed in April 2005, sir, and there hadn't been one since I was there. I'm not aware of others, but I don't know. In the close to four years since I've been there, there has not been; that's correct.

Mr. Randy Hillier: But we know the Human Rights Tribunal has been around for a little bit of time, and it causes me concern that it has never had an audit or impartial external evaluation, especially even more so now when we see this great change happening with the tribunal, this transition happening: significantly increased budgets at the tribunal, bigger workload. We've seen it go in the last three years from three people out of 15 making over \$100,000 to, now, 28 out of 71 full-time

people making over \$100,000. I think it's probably most important that we do evaluate the business, and I'm wondering: Are you or the Human Rights Tribunal looking at bringing in some impartial evaluations or audits to determine how you're doing this coming year?

Mr. Michael Gottheil: We're here.

Mr. Randy Hillier: I mean financial audits.

Mr. Michael Gottheil: I know that Mr. Draper and Ms. Hodge prepare reports for the treasury board and the Management Board and we are required to provide financial reporting. I'm really not aware of other steps within the public service that can or may be taken.

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Mr. Randy Hillier: Maybe Mr. Draper might be better prepared to respond.

Mr. Michael Gottheil: I'll certainly let Mr. Draper answer, but I believe that if the government seeks to conduct an independent audit of our finances, I guess that they can do that. Mr. Draper?

Mr. David Draper: Sure; I'm happy to respond. As Michael said, we fully participate in the normal budgeting process. We are subject to audit. We have not been audited. To your very specific question: Do we plan to seek our own audit? We don't have current plans to do that.

Mr. Randy Hillier: I want to follow up on a couple of things. We've seen the whole subject of human rights tribunals and commissions across this land, not just in Ontario, come under significant scrutiny in the previous year or two. One of the problems that we've seen is where the same complaint can be filed in multiple jurisdictions. Of course, we're always looking for value for money, for expeditious and timely results and, of course, justice. I'm wondering if the Human Rights Tribunal is looking at if there ought to be a mechanism to prevent the same complaint from being lodged in a multitude—well, if it's already launched in other jurisdictions, for the Ontario Human Rights Tribunal to disregard it, for example.

Mr. Michael Gottheil: Let me answer your question in this way: We are a creature of statute, the Human Rights Code, and our powers, our mandate and our responsibility are defined in that statute. So we can't go outside our mandate and we can't avoid our jurisdiction and responsibility. Having said that, your point is extremely well taken, in the sense that we recognize that there ought not to be multiple pieces of litigation dealing with the same matter going on at the same time. So while we can't refuse to accept an application per se, we have a couple of procedural mechanisms that we can and do employ to deal with the issue that you raise.

First of all, we have a process in our rules with respect to deferrals. When a matter comes in, first of all, in the application—

Mr. Randy Hillier: I think that—

The Chair (Mrs. Julia Munro): Just let him finish.

Mr. Michael Gottheil: In the application form itself, we require an applicant to identify whether the same issue is being dealt with in another proceeding, specific-

ally because we want to avoid those kinds of things. So we require an answer to that question. That might be a court; it might be the Human Rights Commission; it might be a grievance arbitration—there's a range—and we require an answer to that. Then, if that is the case, we will either, on our own initiative, or a respondent might raise the issue, "Look, it's being dealt with somewhere else"—we will engage a process where we will propose to defer dealing with that application until the other matter has been completed. So that's the first stage.

Mr. Randy Hillier: Okay. I think that answers my question. Again, when I talk about impartial evaluations, we all have a role to better ourselves, better our agencies, better our organizations, and that's one of the things that evaluations allow us to do: identify areas of concern and then bring them forth to the appropriate bodies to look at correcting them.

During all this discussion and through my reading, we've seen a lot of discussion and talk about the process of mediation or adjudication. I'm not seeing much evidence of how the tribunal, once an application is received, determines if it ought to proceed at all or if it ought to be discarded, if it's trivial or frivolous. Right now you have about 2,000 cases; how many cases—or do you track them?—are discarded completely and don't make the grade, might I say?

Mr. Michael Gottheil: If I may answer your question in two parts, because one part deals with the process for identifying and considering issues with respect to our jurisdiction or merit and that sort of thing; and the other one, you asked about numbers.

On the first one, as I said earlier, we're a creature of statute. The way the statute is written, it provides individuals an opportunity to file applications with us. We don't have the power to say, "Well, we're not going to take your application." We have to take the application. Now, how we deal with it at that point is an entirely different matter.

What we have done, in fact—and the other thing I should say is that the way the legislation is written, it says that the tribunal may not finally dispose of an application that is within its jurisdiction without first providing the parties an opportunity to make oral submissions.

What we do on a procedural level is, when we receive an application—I mentioned before about a completeness check—we make sure that the form is filled out and complete. If it is not complete, then we will send it back and say, "You have to fill out the appropriate forms," and explain. That sometimes identifies cases that some might say are non-jurisdictional, because if the person can't say which ground of discrimination, if they can't identify that, that probably means, or may mean, that we don't have jurisdiction. That's one point at which there could be an analysis of whether we proceed any further.

Secondly, we will do an initial check for what we call apparent jurisdiction. We ask specific questions on the form: "Where did the events of your claim take place?" If the person says, "In Florida," before we serve it on the respondent, we will ask the applicant to explain why they

think we have jurisdiction, because generally we only have jurisdiction over things that happen in Ontario.

That's the first stage. That's before we even serve it on the respondent.

Mr. Randy Hillier: So this person from Florida, let's say, or the event in Florida, what would you do with that? Would you dispose of that application at that point?

Mr. Michael Gottheil: What we do is we send a letter to the applicant saying, "It appears to us that your application may not be one within our jurisdiction and one that we can deal with. You have"—I'm not sure if it's 20 or 30 days—"to provide us submissions on why you think we have jurisdiction." If there is no answer to that, then we would dispose of the application; correct.

Mr. Randy Hillier: Okay.

Mr. Michael Gottheil: Now, if it appears to us that we have jurisdiction, and the form is complete, then we will serve it on the respondent and the respondent files a response. There are opportunities in the response form for the respondent to identify if they think—apart from saying, you know, "It didn't happen the way the individual claims"—there are jurisdictional or fundamental problems with the application; the respondent can raise those. There are places in the response form that prompt for those kinds of issues.

Again, if those are significant issues, before the matter proceeds we will ask the parties for submissions on that particular issue, again trying to ensure that a matter is dealt with on its merits, the true basis of the facts and the law, with a process that's proportional to the issues involved. We are aware of those kinds of concerns that you raise, that others have raised, and we try to respond to those within the context of the legislative imperatives that are put on us.

Mr. Randy Hillier: Okay. So the final part of that question: How many of those cases would be disposed of with no action?

Mr. Michael Gottheil: In the new stream, the 1,000 or 1,200 applications—actually, I should speak to the end of December—the 1,050 applications, I believe that there were 22 dismissals and 18 withdrawals or 20 withdrawals—

1100

Mr. David Draper: Nineteen.

Mr. Michael Gottheil: Nineteen withdrawals. The withdrawals are often because we send something back or we advise the person that it appears not to be jurisdictional, and they say, "I didn't understand; I withdraw my application."

Mr. Randy Hillier: So that would have been out of those 250 decisions that have been made.

Mr. Michael Gottheil: Correct. And then there are others, though they are not yet finally disposed of, where those 250 decisions may have asked the parties for submissions and we're waiting for submissions on that preliminary issue but we haven't yet decided.

Mr. Randy Hillier: Okay. One further element of human rights that I want to talk about—of course, the purpose of human rights and this tribunal and, of course,

all of us here is to prevent injustice, not to create it. I'll speak to this one case of this fellow with the restaurant. I won't bother to mention names. You probably know the case: a patron who wanted to smoke marijuana cigarettes in the restaurant. Of course, the owner of this restaurant eventually pled essentially no contest. The cost to defend himself was greater than the reward of defending himself. It was going to cost him \$60,000; that was the figure that he was quoted. He'd already spent \$20,000, and he decided he was better off to give up and settle.

Do you see a fundamental failing with our system when we provide legal services to one side of the equation but not the other side of the equation? Here the public tax dollars are paying for the adjudicator, paying for the Human Rights Tribunal, paying for legal support for the plaintiff, but there's no assistance to the defendant. Do you not see a failing there, and a failing that is creating injustice? The unintended consequence of this action is injustice. Does the legislation of your tribunal prevent you from funding the defence's legal support?

Interjection.

Mr. Randy Hillier: I'm asking, does the legislation prevent you from doing that?

Mr. Michael Gottheil: Just on the last question, sir, the legislation doesn't provide us the power to fund anyone. The legislation creates a Human Rights Legal Support Centre which is separate from us, and we don't have any control; we can't order them to do anything. So the legislation doesn't provide us the ability to—

Mr. Randy Hillier: Fair enough.

Mr. Michael Gottheil: Now, I suppose somebody could come before us and argue that we do have the power, somehow, to order the funding, but I don't read the legislation—

Mr. Randy Hillier: Thank you for the clarification. I think that was important. I think this speaks to this bigger subject that my colleague on the opposite side has brought up. It is important that human rights, this whole bundle of human rights that we're talking about, the support, the commission, the tribunal—it is a jungle of human rights out there. I think for us to get really good clarity on the single tree, the agency, the tribunal tree in human rights, we will need to bring in people from the commission and the legal support side for us to get a fuller and complete understanding of how well this tree is doing in the human rights jungle.

Thank you very much.

Mr. Michael Gottheil: Thank you, sir.

The Chair (Mrs. Julia Munro): Thank you. Ms. DiNovo?

Ms. Cheri DiNovo: I just wanted to follow up again on the legal representation angle. We in the Ontario New Democratic Party feel very strongly that this is part of justice—that people have access to legal representation—and of course that includes your tribunal as well. We're concerned that there don't seem to be statistics available on who is represented as a complainant and who is represented as a respondent by a lawyer, paralegal or any

of that. I'm wondering how we, as a committee, can get those statistics.

Mr. Michael Gottheil: We have some statistics. As I said, we know that about 40% of the individuals in the new applicant stream are represented. As a result, 60% are self-represented, and roughly 20% are represented by the legal support centre.

Ms. Cheri DiNovo: Are those respondents or complainants?

Mr. Michael Gottheil: Those are complainants—applicants. That's correct.

I don't have statistics for you about respondents. I know that we are continuing, as Mr. Draper talked about our case management system and our tracking system—again, we're in early days and we're developing the various reports. We need to measure our performance. We need to measure the effectiveness of how we're fulfilling our mandate, which will mean that we need certain information. There may be other information that others may want for other purposes. We need to collect information to ensure that we're meeting our statutory mandate and that we can report to the minister when we're called here to report to you. Some of that information we don't yet have, we're early stage, and we are continuing to develop a sort of model of the kinds of reporting and statistics we need to respond and to assess our own mandate, so some of that will come, absolutely.

Ms. Cheri DiNovo: Okay. Again, we're just a little concerned. You seem to have, on the complainant side, some pretty ready figures, but not on the respondent side. We would just like to know, our research would like to know, where they can get those figures, because to us it speaks to the ability to access justice, which I think is all of our concern here. So, respectfully, maybe you could just find them out. It shouldn't be that difficult to do, looking at what cases you've already seen—who was represented, who was not, and how—and just get back to us. I don't expect them right now, but if you could commit to getting back to us, that would be warranted, I think.

Mr. Michael Gottheil: Mr. Draper will comment. In terms of getting back to you, we don't collect that at this point, to be able to respond to the particular questions you have, but certainly in terms of the issues you're raising, in terms of what people want to know and need to know and how that blends with our own mandate and what we want to measure, this is useful for us. So Mr. Draper will answer.

Mr. David Draper: You may have to stop me. This is my favourite subject. We track the cases differently, and it might be useful for you to know that. As far as the transitional cases, we use a very simple access database. The trade-off there is, is it worth going to the staff effort to put the information into the access database to draw it out? For better or worse, we have not put representation in that access database, so collecting that information on the transitional cases is a challenge.

On the new applications, we are developing some reports that we expect to run out of our case management

system that I would expect to include the kinds of questions you're asking.

Ms. Cheri DiNovo: You can see why we find it troublesome. This was one of the major discussions and major concerns with Bill 107 when it was brought in, so again, we'd appreciate anything on that basis.

The next question I have has to do with budget shortfalls. Our information suggests that between 2009 and 2010, the tribunal is projecting a total budgetary expense of \$10.5 million. This is based on a complement of 87 staff, including vice-chairs. So looking at the current allocation for that same period of \$8.7 million, the tribunal is confronting a pretty significant budgetary shortfall for this year and, by inference, for coming years. I was wondering how you plan on seeking to address that situation.

Mr. David Draper: I'll speak to the business side of it. There are some challenges. The figure that the \$10.5 million is based on is a staffing level that we don't expect to reach this year, and we may find that it's a staffing level that we can live with. Of course, if we had more, we could use it. The staffing level that we were looking to reach at the end of the fiscal year wouldn't take us to the \$10.5 million, but there still would be pressures.

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What we've been saying in our budgeting process all along is, we're not sure of the numbers. We're not sure of how many are going to come in; we're not sure about some of the projections we made about settlement rates and about the length of hearings that are going to be required. Our hope is that it's an ongoing discussion with the funders; that's our hope. The \$10.5 million isn't a magic number either; it's based on projections.

That's a somewhat wishy-washy answer to your question, but I think an accurate one is that we agree with you that, on the surface, it looks like we may face some substantial pressures. Whether that's going to come to bear, we're watching.

Ms. Cheri DiNovo: Right. This comes out of the feeling amongst some who did depute about Bill 107 that the problem was not structural so much as budgetary, that there simply wasn't enough money flowing. So of course we're concerned that even with this new structure, if there's not enough money flowing, you're going to end up with a backlog again. That's where that concern comes from.

One of the other concerns that was raised by human rights activists when you were set up under the new system was the overarching rules of the tribunal and the fact that they seemed to breach the legal safeguards as laid out in the Statutory Powers Procedure Act. These are: refusing to hear witnesses, the power to waive any of the rules of procedure, the power to set dates arbitrarily or to defer consideration of an application without reason. These were all incredibly worrisome to folks in the human rights area.

I'm just wondering, now that you're up and running, if you've given any consideration to amending your rules or procedures to deal with those criticisms and if you're

concerned that those rules give too much discretion to the tribunal.

Mr. Michael Gottheil: The comments and the views that you're talking about, obviously we've heard them. I talked earlier about the consultation process that we went through with the user community, the broader community, experts in administrative justice and the justice system. Certainly we've heard those views. To some extent, I think we've probably met and listened to the individuals and groups that had those views more than any others.

But I think that some of the concerns, with the greatest respect, simply aren't accurate. You've mentioned the power to defer without reasons. We don't defer without reasons. In fact, we issued 250 decisions. Many of them are deferral decisions. There are reasons. We ask for submissions; we provide reasons. One of the fundamental, core values that we operate on is transparency and fairness. Transparency means transparency of the decision-making process; fairness includes providing clear, understandable reasons. We do that, and we're committed to that. So with the greatest of respect to some of the people out there who were saying that, that has not been our experience.

With respect to some of the other concerns that you mentioned, I appreciate that, again, there are certain views about how a human rights system, or adjudication of human rights, should be. The Statutory Powers Procedure Act is a piece of legislation that is old and that is based on very traditional procedural, technical, court-like processes. There are many administrative tribunals that don't operate under the SPPA. We do operate under the SPPA. What it says is that we may make rules notwithstanding. It gives us specific powers and we make rules that differ, depart from the SPPA.

The whole question of the nature of what it means in terms of procedural fairness, looking at traditional, court-like technical rules and whether those actually provide access to justice and fairness for parties, is a debate and discussion that currently goes on within the justice community among courts, tribunals, academics and people in various fields. Although I appreciate and respect some of the views of individuals who are saying this, I think there's an understanding and probably a consensus in the administrative justice world that a more modern approach, an approach that actually enhances access to justice, is an approach that isn't necessarily tied to those old criminal law, very technical, rules.

There have been a number of studies—Mr. Justice Osborne did a review of civil justice reform; there was work done in Quebec; there was work done in British Columbia—recognizing that the nature of the process, the procedures, have to be responsive to the nature of the case. They have to be proportionate to the nature of the case and the parties. It's not human rights versus divorce versus small claims. It has to be flexible enough to deal with the wide range of types of cases. So what our rules do is to say that we have a process whereby the adjudicator will, in consultation with the parties and after listening to the parties and getting submissions, have

fashioned the hearing to make it most effective and fair. Ultimately, the code tells us what we need to do, which is to ensure that the process is fair, just and expeditious.

Ms. Cheri DiNovo: Along that line and in the interest of transparency, have any litigants expressed concern about the rules?

Mr. Michael Gottheil: Not that I'm aware of.

Ms. Cheri DiNovo: No? Okay. Are you aware if the rules prevented any litigants from presenting all of the relevant evidence in any case? Has this happened or not happened?

Mr. Michael Gottheil: An adjudicator never wants to exclude relevant evidence. The question, I think, that adjudicators grapple with—and this happens in the courts—is that the traditional legal approach, the adversarial approach, tends to enable parties who are lawyered up not to bring relevant evidence; to bring irrelevant evidence so that essentially you exhaust the other side through extended proceedings. Adjudicators and judges—

Ms. Cheri DiNovo: Yes, which speaks to the problem, of course, that we really don't know if people have lawyers or not. Of course, if they had lawyers, it would be an advantage to do just that before the tribunal, as contrasted with someone who did not have a lawyer.

Mr. Michael Gottheil: With respect, I would disagree. When you have a process which essentially institutionalizes, which has rules that say, "Here is the process that we're going to use to determine the most effective and fair and expeditious way to reach a fair outcome," I think that is much better than the process in which you never know what's going to happen. We have a process which says that the parties engage with the tribunal, engage with the adjudicator. There are decisions made about what the relevant evidence is as opposed to the unnecessary evidence. I would suggest, with respect, that rather than advantaging people with lawyers, it actually enhances justice for everyone whether or not they're represented by lawyers. So I appreciate there's a view from some that what we need is more lawyers, more process, more of the law school, traditional, technical rules, but I don't think, with respect, that's the modern approach to administrative justice.

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Ms. Cheri DiNovo: However, it is the system for justice in just about every other venue. I quoted the Attorney General saying that the aim is to have more access to lawyers, not less access to lawyers. Again, of course, it's a personal choice, but as long as a lawyer is a choice one can make, that's the question we come back to.

Mr. Michael Gottheil: I would—

Ms. Cheri DiNovo: Just if I can continue on.

This speaks to the tribunal's excessive new powers to possibly, with respect, override legal safeguards laid out in the SPPA. In BC, as you know, the direct access model was instituted there and Mary Woo Sims—I'm just going to read another quote here—the former chief commissioner of human rights for BC, said: "There's a

saying 'Be careful what you ask for.' I'd urge Ontarians to be very careful. Our experience in BC is that a direct access human rights model is doublespeak for a model that ensures no justice at all."

Again, this is the system at work in another province. Do you think there's any truth to what she's saying?

Mr. Michael Gottheil: I can't speak to what's going on in BC. That's a different system, actually, than what we have in Ontario. In BC they don't have a commission; in Ontario there is a commission.

I know that at the Human Rights Tribunal of Ontario we have developed rules and processes which ensure fairness, which ensure access, which ensure people have an opportunity to state their positions and to have the outcomes be fair and timely. What we're finding on the ground in the first six months, is that's happening. So I can't really speak to what's going on in BC.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes this round of questions. Mr. Zimmer?

Mr. David Zimmer: Yes, thank you. I have five questions and I've got about—

The Chair (Mrs. Julia Munro): Twelve minutes.

Mr. David Zimmer: Okay. So the first question: How does the tribunal deal with a complaint that has been made to the tribunal which is also, perhaps in another form, before another adjudicative body? For instance, someone's made a complaint to the Ontario Police Commission about police conduct and they have a complaint before your body; they have a complaint before the College of Physicians and Surgeons and a complaint before your body. How are those matters dealt with?

Mr. Michael Gottheil: As I mentioned before, we have a process that we call deferral. It's in our rules. It's explained how that may arise. Again, our approach is, as a general rule, that we try to avoid duplicitous litigation. So if somebody has the same issue being dealt with in another forum, whether it's police complaints or—most of the cases are actually grievance arbitrations, where unions have filed grievances on behalf of a grievor against an employer and the grievor then files a human rights complaint. So it's the same matter. We know that labour arbitrators under the Labour Relations Act have the power to interpret and apply the Human Rights Code, so there's really the same case in two forums. We will generally defer that. Again, we give the parties an opportunity to make submissions about why it's not appropriate to defer. There are a number of decisions that we have reached and I think the jurisprudence is developing which indicates that that principle of avoiding duplicitous—you know, multiple litigation on the same issue is to be avoided.

Mr. David Zimmer: And if—

Mr. Michael Gottheil: Now, there are situations in which the issues are different. It appears the same but they're different—so we might not, and there have been cases where we've said, "We're not going to defer." That's how we do it.

The other thing I should say, though, is that when we defer, the rules provide that within 60 days after the other matter is completed, the applicant can make an application to the tribunal to bring the matter back to the tribunal. At that point—again, as I mentioned to Mr. Hillier, we operate under the statute; we can't avoid an application. But there is a section of the code, section 45.1, which provides that: "The Tribunal may dismiss an application, in whole or in part," where the subject matter has been appropriately dealt with in another proceeding. There have been cases that have come before us in which the matter has been dealt with in another proceeding and the respondent says, as a preliminary matter, "We think you should dismiss this application because the applicant has gotten their remedy, has gotten their day in court"—their justice, for example—"in that other proceeding." We will have to consider that and hear arguments on that.

We have a couple of cases. For example, there was a case—

Mr. David Zimmer: All right. In effect, if it's reasonable, you defer to the other body but you can still come back and have a second look at it if you want to.

Mr. Michael Gottheil: That's right. We've said we're not going to sit in appeal, because these are adjudicative bodies—

Mr. David Zimmer: I just want to get through a couple of the other questions.

Mr. Michael Gottheil: I'm sorry.

Mr. David Zimmer: I've got about four here that I want to get through.

This question has to do with the accountability of the tribunal itself and its members. All tribunals have their own internal code of conduct and typically have a complaints process. Have you got a code of conduct? And how does your complaints process, which I understand you have, work if people complain about the tribunal in some fashion, or members of the tribunal? Can you just tell me—very short—whether you've got those procedures in place and how they work?

Mr. Michael Gottheil: The code of conduct for adjudicators is in your package, as is the complaints procedure. We developed a formal complaints procedure whereby individuals who are unhappy about the tribunal for whatever reason can file a formal complaint. There is a process by which we will address that.

Just quickly, if it has to do with an adjudicator, it's something that I as chair will handle. If it has to do with staff, Mr. Draper, as executive director, the top civil servant within the tribunal, deals with it.

Of course, if the complaint is that somebody didn't like a decision, that they didn't like the decision of the adjudicator, that's obviously not something we can deal with. That's something that the person may take to Divisional Court.

Mr. David Zimmer: A question to do with accessibility: Sometimes there's this sort of idea that sets in that the human rights world is Toronto-centric, if I can use that expression. What procedures and processes, and what kinds of initiatives, are you making to reach out to

those remoter parts of the province where access is an issue in terms of just getting there and finding lawyers and finding the process? It's much easier in Toronto. What are we doing for stuff out of far northern Ontario, for instance, or the rural communities?

Mr. Michael Gottheil: As I said, in terms of the consultation process that we engaged in, in the lead-up and ongoing, we got outside of Toronto. We were in the north and in southwestern Ontario, in Ottawa and so forth.

In the actual business of the tribunal, we have a policy, or rather a practice direction, on hearing and mediations outside of Toronto. I'll see if I can get these; we have I think 11 regional locations. We have Sarnia, Windsor, London, of course Toronto, Kingston, Ottawa, North Bay, Sudbury, Timmins, Sault Ste. Marie and Thunder Bay. In addition, if there is particular need for accommodation-related reasons, we will go to smaller centres.

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Mr. David Zimmer: An administrative question: Have you developed policies on scheduling of hearings, rescheduling requests, requests for adjournments, hearing dates and all that sort of stuff? Because one of the difficulties in the court system, and I rather expect in your system, is this whole business of multiple adjournments and cases dragging on. What do you do? How do you handle those? What's the policy on those issues; that is, moving the case along?

Mr. David Draper: I've been in this business for a while. That's a very good question, because it's one of the biggest headaches of every tribunal and the courts. We do have a policy on scheduling and adjournments that's quite tough, but everyone does; the issue is enforcing it.

I'm going to give you the "early days" answer. We have the policy; we are working through it. To be honest, reschedules recently have been a bit of a challenge for us and one we will need to face. But your question is a good one.

Our goal is to keep our hearing centre fully busy, and—

Mr. David Zimmer: You've alluded to some issues with rescheduling and scheduling. Just in a nutshell, what's the issue there?

Mr. David Draper: The biggest problem that we face, and it's faced by the places I've been before, are the cases where the parties are quite fine with the adjournment and they don't recognize the cost to the tribunal and to the taxpayer of that. Two lawyers may say at the last minute, "Well, you know what? Give us a little more time. We might be able to settle it," which isn't a bad thing, but it costs you that slot on the calendar. Balancing those "Let the parties determine the pace of the proceeding" cases, which isn't a bad thing, and enforcing the tribunal's right to use its resources efficiently is just that: It's a balance, and we have a policy that I think reflects that and one that we will be working to enforce. If we're back another time, you can ask the same question and I suspect I'll say, "It's a challenge, but I hope we're doing well at it."

Mr. David Zimmer: But you're keeping the pressure on?

Mr. David Draper: I think that's the answer: You keep the pressure on.

Mr. David Zimmer: My last question: I know you've only finished seven months, but I see you've got a business plan which covers the period 2009 through to 2012. That's a three-year business plan. Can you just give me an oversight of some of the highlights or the broader strategies in place for that three-year going-forward business plan?

Mr. David Draper: I think we've covered them. I think we've talked about the things that we're looking at there. We're looking at the numbers; we're looking at the staffing models; we're looking at the three streams and how that's going to play out. One of the issues that is reflected in that business plan is the fact that we're only funded in the transition cases through 2010. I suspect that is an issue we're going to need to talk about. The timelines on that make that pretty optimistic.

Mr. David Zimmer: What steps or intervals are in place to take periodic looks at the business plan over the years; that is, measured year to date, year to year and that sort of thing?

Mr. David Draper: We plan to use the annual report to do some of that. We will aim at the annual report to do the roll-ups for the statistics that are now six or seven months in for the year.

Mr. David Zimmer: Thank you, Chair.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on to Mrs. Elliott.

Ms. Lisa MacLeod: We're just going to split our time.

The Chair (Mrs. Julia Munro): Okay.

Ms. Lisa MacLeod: I have a very quick request and then a quick question, and then the balance of the time will be spent with Mrs. Elliott.

Just quickly, if it's possible for you, before you appear before us again, to provide the clerk's office with the MOU, as well as with your annual plan.

To follow up with Mr. Hillier's question about jurisdictions, there is no question that that was quite troublesome with the Maclean's issue, with jurisdiction-shopping not only here in Ontario, nationally, but also in British Columbia. I think that this committee, in order to make sound recommendations to the minister, should be well apprised of the jurisdictional issues and how you handle them. I appreciated you providing us with what you did today, but could you table that with the clerk?

As well, if you could provide us with any discussions you may or may not have had with respect to compensation for those who have been falsely accused or wrongly accused, who spent an enormous amount of money in terms of being the defendant. I know that is a question followed up by Mr. Hillier.

My question, though—I won't take a long time, but it is something that I asked each one of your appointees, those people who were either vice-chairs or members of your committee. It follows with respect to the Maclean's

issue and Mark Steyn's piece, which ended up going to human rights tribunals and various places across the land. Chief Commissioner Barbara Hall at one point said that the media should be seen through "a human rights filter." I asked everyone who appeared before this committee, "Does discrimination trump free press or does free press trump discrimination?"

You have a very unique position as a quasi-constitutional body. You have a code which we have put in place in the province of Ontario, but at what point does the code supersede constitutional rights in this country? I speak specifically of the freedom of expression under the Charter of Rights and Freedoms. I'm wondering: How do you adjudicate when you do have a Human Rights Commissioner in Ontario suggesting that the media should be seen through a human rights filter? For example, Alan Whyte supports media's freedom under the Charter of Rights to report stories "as they see fit," but then he qualified it; he said, "If there is some sort of discrimination that comes out in the reporting that is arguably contrary to the code, then I would also feel that it would be open to a complainant to challenge the reporting as being discriminatory on the grounds of race."

I think it's a legitimate question. It's a question that has been raised from coast to coast. It's one that, I must admit—since we decided to call the tribunal, my e-mail box has been filled by everyday Ontarians, but also by people from outside of this province. I'm wondering how you respond to that. How do you marry your quasi-constitutional role with the constitutional rights that every Canadian and every Ontarian has under the Charter of Rights and Freedoms and our Constitution in this country?

Mr. Michael Gottheil: If I understand, your question is whether human rights trumps free speech or if free speech trumps human rights.

Ms. Lisa MacLeod: Looking at it through your code, but also through the application of our Charter of Rights and Freedoms. I understand that that is difficult; I know you have a difficult job. But at some point, which is more important?

Mr. Michael Gottheil: I guess the short answer is, neither trumps either, because really, depending on the context in which you're speaking, freedom of speech is a human right. There's a variety of human rights that are set up in the Charter of Rights. The Human Rights Code is an anti-discrimination statute. What it does is, it specifies certain behaviour that's prohibited. Then, of course, there are international covenants, so there's a variety of documents, charters, codes and laws—

Ms. Lisa MacLeod: But would we agree, then—

Mr. Michael Gottheil: —that set out our fundamental freedoms.

Ms. Lisa MacLeod: —that the basis of our fundamental rights in Canada is the Constitution—

The Chair (Mrs. Julia Munro): Excuse me, just one at a time.

Ms. Lisa MacLeod: Sure. Sorry, Madam Chair.

Mr. Michael Gottheil: I'm sorry?

Ms. Lisa MacLeod: I'm just wondering what the basis of our fundamental rights and freedoms is in this country. Is it our Charter of Rights or is it a human rights code in the province? And by extension of that, I just explained that—

Mr. Michael Gottheil: With respect, Ms. MacLeod, we've probably spent two hours discussing that—the source of human rights. Human rights in this country existed before the code; they existed before the charter. It's in the common law; it's in the foundation of democratic political philosophy as expressed through court decisions. But if you're asking me which trumps—

Ms. Lisa MacLeod: I am.

Mr. Michael Gottheil: What I'm saying is, neither trumps either, because they're all human rights.

You said I had a difficult job; not always, but sometimes—and sometimes what you have is cases in which two human rights conflict; there are competing rights. Sometimes you have cases in which a human right conflicts with not a human right but a legitimate business interest, for example, or an economic interest. These are very challenging decisions. Certainly when it's two human rights that conflict, it's very challenging. I have to say, though, that although I sometimes have a difficult job, my job is made easier because my jurisdiction and the tribunal jurisdiction are related to the code. So it's really up to you, as parliamentarians, to decide whether there are exceptions in the code. For example, the only provision in the code that I know of that specifically deals with speech or expression is the section that says it's forbidden to announce an intention—or an announcement to discriminate. So in other words, the code says that it's improper for someone to put, for example in a job ad, "No Jews Need Apply," or on a restaurant window, "Blacks and Muslims not welcome."

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Ms. Lisa MacLeod: But through the content of our media—

Mr. Michael Gottheil: If I can just finish. That, arguably, is contrary to the code. On the other hand, the subsection there says that this is not intended to affect freedom of expression. So if we got that kind of case, that would be difficult, because there are competing values. But that tension between those rights doesn't exist because of the Human Rights Code; these are tensions and legitimate debates that exist in our society that go back hundreds of years. Take away the code, and the tensions don't go away. I agree with you 100% that they're very challenging issues.

Ms. Lisa MacLeod: Thank you, Mr. Gottheil. I wish I could question you some more today, but hopefully we'll get that opportunity, if the government acquiesces, and I'll let my colleague continue.

Mr. Michael Gottheil: Thank you.

The Chair (Mrs. Julia Munro): You have a short time.

Mrs. Christine Elliott: Okay. I'll try to condense my question. Basically what I'm interested in, Mr. Gottheil, is the degree of communication that exists between the

tribunal and the legal support centre, and then the tribunal and the Human Rights Commission, with respect to the kinds of cases that you're hearing, and what mechanisms exist in both cases to communicate what you're hearing to allow them to understand what legal resources should be employed or what kinds of issues of systemic discrimination on the commission side could be brought forward.

Mr. Michael Gottheil: On that level, I think the communications are formal, and are communications that are authorized and contemplated by the code. What I mean by that is that certainly we issue decisions that are publicly available, and I think we send them to a variety of stakeholders, including the commission and the legal support centre.

Secondly, the code provides that we may refer cases to the commission, in the sense that—not refer cases for adjudication, but when we decide a case, we may say to the commission that this is something they may want to look into. We have not done that to date, but that's in the code. The commission, of course, has the right under the code to request applications and responses. So they're entitled under the code to see every application we receive and every response that we receive. Those are the kinds of formal communications that would exist.

As I said earlier to a question, if there is a particular case in which an applicant is self-represented and we have some concern that perhaps the particular nature of the issue is one in which support and advice would be useful, we might put right in the decision that there are opportunities for legal support. I'm not sure I've answered your question. I tried to.

Mrs. Christine Elliott: Just one follow-up, because one of the issues that came up during the Bill 107 hearings was about how the commission could investigate systemic discrimination if they weren't fully aware of what was going on in the tribunal side of things to see the kinds of cases that were actually being brought forward. So I think, from what you were telling me, the tribunal can sometimes suggest that maybe they want to get involved. But on their side of things, how would they know on a regular basis—except that if you from time to time referred things to them—if there's a pattern of systemic discrimination happening?

Mr. Michael Gottheil: Well, as I say, they're entitled to see every application, and they have asked for that, and we send them. They are seeing every application.

The Chair (Mrs. Julia Munro): Thank you very much. Ms. DiNovo.

Ms. Cheri DiNovo: Again, I just thank you for coming and answering these questions.

I have a question about the full-time-equivalent component of your hearing adjudicators. How many do you have full-time?

Mr. Michael Gottheil: We have 22 full-time vice-chairs and myself as chair, so there are 23 full-time adjudicators.

Ms. Cheri DiNovo: Our concern, again, in the NDP is that you have enough money and enough adjudicators to

prevent what was problematic in the last system, which was the backlogs. That's the nature of that question.

Along the same lines, you said approximately 75% of your applications—or this was the hope—would be settled at the mediation stage. Has that proved true so far?

Mr. Michael Gottheil: In fact, in these early days, the settlement rate is lower than that. As I mentioned, in the new stream we've held just under 200 mediations—190—and settled 105, so that's definitely not 75%. We're obviously keeping an eye on that. But, as I've said, one of our core values is the opportunity to be heard. Unlike other tribunals, we don't force mediation. We don't force it in the sense that it's not mandatory. We want to ensure that applicants and respondents, if they say, "No, we want to be heard; we want a decision on this claim," have access to that—full access and meaningful access that's not restricted by money or lawyers.

At the same time, we're keeping an eye on that because I think that there's also a recognition that where the parties want to resolve an application through mediation, we will facilitate that. Oftentimes, not only is mediation quicker, but more importantly, it's a more common-sense, workable resolution for the parties. That the settlement rate at this point is a bit lower, we see that. On the other hand, I never studied statistics, but I would imagine that the numbers are not yet sufficient to make a prediction.

Ms. Cheri DiNovo: It's early days.

One of the other projections or hopes was that approximately 70% of the cases that do not settle at mediation can be disposed of in a two- to four-day hearing. Has that assumption been met?

Mr. Michael Gottheil: We're sticking with that assumption.

Ms. Cheri DiNovo: But has it been met?

Mr. Michael Gottheil: Well, we're only seven months in. We're starting to schedule hearings. We're pushing for that. That also ties back to Mr. Draper's answer to Mr. Zimmer with respect to scheduling. We want to ensure that hearings are completed within a year. To say it facetiously, unfortunately we have to deal with the parties, who sometimes aren't as keen in getting the matter on to a hearing. Of course, what do you do when we're serving the parties, and they are not interested in getting the matter on? We are. There's a bit of a tension. But we're committed to ensuring that matters are dealt with in a timely way, so we're certainly keeping an eye on all of those statistics.

Ms. Cheri DiNovo: Okay. Just to sum up, from our party's point of view, we're interested in exactly that, the access and transparency. That means statistics-gathering; it means looking at what's happening and measuring against what happened in terms of access.

I would very much like to see tabled with the clerk primarily the access to legal counsel or paralegal counsel on both the respondent's and complainant's part. I'd very much like to see some quantifiable statistics on things like mediation, applications being settled, how long for

the hearings etc., because this speaks to the potential for backlog, and backlog is a way of denying justice. So we're concerned about that.

We're also concerned about you being underfunded, for the same reasons. That's another paramount concern we bring forward: that if you don't have the money to hire the people to do the job, again, a kind of sidelight of that will be that people won't have access to justice under the Human Rights Code. So that as well.

We're also concerned, again, about the lack of statistics regarding complaints about the process itself at the tribunal. So, again, nobody, to your knowledge, has complained about the process to date—it's early days—but we would hope that, going forward, there would be some tracking of that, that if people do complain about the process of the tribunal, about their access to lawyers or any aspect of that process, that be tabled and looked at and brought forward the next time we perhaps meet here for this process.

All of that is important to us, because all of that ensures adequate access to justice in the final analysis.

Thank you for coming, and I'll look forward to seeing those figures.

The Chair (Mrs. Julia Munro): That completes the questions and comments from the committee. I want to thank you for being here this morning and being able to give us some insight into the tribunal.

I want to just inform members and the audience that the afternoon session will begin at 1:30. I would ask members of the committee to stay behind for a brief in-camera meeting. We have two items to discuss.

This committee, then, stands recessed until 1:30.

The committee recessed from 1151 to 1330.

The Chair (Mrs. Julia Munro): Good afternoon and welcome to the government agencies committee. This afternoon we will be hearing from deputants on the agency review for the Human Rights Tribunal of Ontario.

MARK STEYN

The Chair (Mrs. Julia Munro): I'd first like to ask Mr. Mark Steyn to come forward and join us. Please sit down and make yourself comfortable. Good afternoon, Mr. Steyn. I would just explain to you that we have 30 minutes set aside that you may use as you wish in making comments. Time that is left over then will be divided amongst the caucuses. So please begin if you're ready.

Mr. Mark Steyn: I'd just like to make a brief statement, and then I'm happy to answer any questions.

The present Ontario human rights regime is incompatible with a free society. It is useless on real human rights issues that we face today, and in the course of such pseudo human rights as the human right to smoke marijuana on someone else's property or the human right to a transsexual labioplasty, it tramples on real human rights, including property rights, free speech, the right to due process and the presumption of innocence.

Far from reducing racism or sexism, the Ontario human rights regime explicitly institutionalizes racism

and sexism through its inability to view any dispute except through the narrow prism of identity politics. It's at odds not just with eight centuries of this province's legal inheritance, but with the United Nations Universal Declaration of Human Rights. Canada likes that one so much, it sticks it on the back of the \$50 bill, even though Ontario's human rights regime is in sustained systemic breach of article 6, article 7, articles 8 to 10, 11, 12, 18, 19, 21 and 27 of the UN declaration. The good news is that Ontario is not in violation of as many articles as Sudan or North Korea.

All are equal before the law and are entitled, without any discrimination, to equal protection of the law. That's article 7. It's not true in Ontario. Last year, the Ontario Human Rights Commission effectively gave Maclean's and myself a drive-by verdict. They couldn't be bothered taking us to trial, but they decided to pronounce us guilty anyway. That neglects the most basic principle of justice: Audi alteram partem; hear the other side. Chief commissioner Barbara Hall didn't bother hearing the other side; she simply declared us guilty. That is the very defining act of a police state: an apparatchik announcing that a citizen is guilty of dissent from state orthodoxy.

But here's the point: Maclean's and I have no fear of Barbara Hall, the commission or the tribunal. You're welcome to try and do your worst to us. We have deep pockets. We pushed back and we filled the newspapers with stories about all these wacky cases that Barbara Hall and others are so obsessed about. Like all tinpot bullies, the commission couldn't take the heat and backed down. But if you're just a fellow who happens to own a restaurant in Burlington, the Ontario human rights regime will destroy your savings, your business and your life for no good reason. The verdict is irrelevant; the process is the punishment.

I would like to say one further thing: When Mohamed Elmasry announced his suits against Maclean's, he was supported by Terry Downey of the Ontario Federation of Labour, and Ms. Downey, explaining her support for Dr. Elmasry, said, "There is proper conduct that everyone has to follow." Sorry; I pass on that one. For one thing, there is no "proper conduct" in the wacky world of pseudo human rights in this province. The rules are made up as they go along, so even if you wanted to follow them, you can't. In John Locke's words, they "dispose of the Estates of the Subject arbitrarily."

Secondly, it's all too easy to imagine the Terry Downeys of the day primly telling a homosexual 50 years ago that there's proper conduct that everyone has to follow, or a Jew 70 years ago that there's proper conduct that everyone has to follow. That's why free societies do not license ideologues to regulate proper conduct. When you subordinate legal principles to ideological fashion, you place genuine liberties in peril, and that's the state in Ontario today.

Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. We will begin with the official opposition, Ms. MacLeod.

Ms. Lisa MacLeod: Welcome to our committee, Mr. Steyn. During the summer, this committee convened to interview and review the 22 vice-chairs and the 22 members of the Ontario Human Rights Tribunal. Throughout that process, your case, Maclean's versus the Ontario Human Rights Commission, as well as what happened in British Columbia to you as well as what happened federally to you, was front and centre on our minds. Consistently throughout that process I asked questions of the deputants, those seeking to be appointed to the Ontario Human Rights Tribunal, if they believed the free press trumped discrimination or vice versa. One of the deputants actually responded. Today, earlier, I asked the same question to the chair of the Ontario Human Rights Tribunal. He responded and said that neither trumps either. I would like your view on that, because it follows a logical set of questions that I have which are next with respect to freedom of expression and freedom of speech.

Mr. Mark Steyn: With respect to the witness this morning, that has become a standard equivocation at the Ontario Human Rights Tribunal. Whenever tribunal judges take away individual human rights, they do so under the guise of what they call balancing competing rights. So for example, going back to the Scott Brockie case, they claim to be balancing his right to freedom of religion with the right of the gay people seeking printed materials to be free from discrimination. In practice they almost never balance those rights. They always defer to collective rights, group rights, in favour of individual rights. I'm an absolutist on this. I agree with the view that the ultimate minority is the individual and classically, historically, common law has been entirely antipathetic to group rights, because who can speak for a group? The notion of group rights should be an abomination to a settled democracy as old as this province.

Ms. Lisa MacLeod: Has the experience that you and Maclean's faced, do you believe—in your opinion, has that chilled coverage of other controversial events in this province?

Mr. Mark Steyn: Yes, I would say that's undoubtedly the case. Essentially, Maclean's and I—Maclean's in the corporate sense decided the amount of money it was willing to spend to see off these assaults on freedom, and I made a personal calculation of the amount of money that I was willing to spend on that. I'm fortunate, unlike most people caught in the human rights trap, to have that amount of money that I can spend.

But the reality is that most editors and most publishers don't want to get caught in this business. What you see progressively is the shrivelling of the bounds of public discourse. People say to me, "Don't worry; you'll be acquitted eventually." That happened to that guy in Saskatchewan, in the Saskatoon StarPhoenix, the fellow who took out the ad, not even quoting the Biblical passages but just citing the chapter and verse. It appeared as an ad in the Saskatoon StarPhoenix. Four years later, that was overturned at the Saskatchewan Court of Appeal. But in reality, nobody can place that ad today. You couldn't take that ad to the Saskatoon StarPhoenix

and expect them to run it. So, in that sense, the public space, the space for public discourse, shrivels remorselessly under this regime.

Ms. Lisa MacLeod: You spoke earlier about the drive-by verdict of the Ontario Human Rights Commission. Could you inform us of other aspects of natural justice that were lacking in your experience before the Ontario Human Rights Commission?

Mr. Mark Steyn: Yes. There's a reason why—but let's start with the basic thing. For example, truth is no defence. No one was disputing the truth of what I wrote, nobody was arguing that it was libellous or seditious or false, for all of which there would be appropriate legal remedy. In essence, the plaintiffs were arguing that they'd been offended. Well, offensiveness is in the eye of the offended. I have no way of commenting on that one way or another. It's not possible in a legal sense to mount a defence to the accusation that you've offended somebody, which is why the human right not to be offended should not exist in free societies. That's the first and most basic thing that this system fails in.

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Ms. Lisa MacLeod: It's interesting that you bring that up. Murray Campbell, who's one of your colleagues here at Queen's Park—he works for the Globe and Mail—wrote a column on August 28 about this committee and the probe that we put forward with the appointees. He writes that: "Ms. MacLeod is right to explore the grey area between free speech and responsibility and to wonder how the tribunal will operate when it is handed allegations of discrimination from people who don't believe press councils or hate laws protect them." He specifically cites you. He says that it's time "for Attorney General Chris Bentley to get it going"—and that's more public debate—"before Mr. Steyn writes another book."

I say this because the defence of you and your freedom to express yourself and the freedom of your opinions—the support ranged from many different groups across Canada, from Egale to PEN to the Canadian Association of Journalists, as well as other journalists that work in the field, in addition to media ranging from the Toronto Star to Eye Weekly to, now, the Globe and Mail. Have you called for the censorship provisions of the Human Rights Commission to be appealed, and did it surprise you that you had so much support?

Mr. Mark Steyn: No, because I think it should be obvious. If anything, I was rather alarmed by the number of Canadian journalists who are quite happy to serve, in effect, as eunuchs of the politically correct state. I can't understand why anybody would want to do that.

It took a while. The organizations you mentioned were late getting on the bandwagon. In a sense, if you want to make this a right-wing, left-wing thing, the international left in the United States, the United Kingdom, Australia—people who loathe me personally—got the essence of this far quicker than the Canadian left did: that if you don't believe in free speech for people you loathe, you don't believe in free speech at all.

Every time you have someone like Haroon Siddiqui at the Toronto Star saying, "Oh, it's all about striking a

balance,” and all the rest of it—every time someone tiptoes down that primrose path, it leads only to tyranny. If you don’t believe in free speech for people you loathe, you hate, you revile, you don’t believe in free speech at all.

Ms. Lisa MacLeod: Thank you very much. I know my colleague Christine Elliott has a few questions for you—or my colleague Randy Hillier has a few questions for you.

The Chair (Mrs. Julia Munro): Okay. I just will warn you that we have about two minutes left for your caucus.

Mr. Randy Hillier: Thank you very much for being here. It is an absolute pleasure to hear people speaking forthrightly, such as yourself today.

The process, you’ve talked about. The process is the trap. The objective is not important in this whole process. Do you have any comments on if this human rights tribunal ought to be here at all, or how you might offer suggestions or recommendations to improve it?

Mr. Mark Steyn: I believe in the abolition of the commission, because I believe the commission is nothing but ideological activists. I have no objection to that; I’ve been accused of that myself, but I do it on my own dime and I don’t see why commissar Hall and her colleagues shouldn’t also do it on their own dime.

The tribunal, I think, needs to be brought within the codes and conventions of this country’s legal system. At the moment, it upends them. The burden of proof ought to be on the accuser. The accuser should not be allowed unlimited funds to frivolously torment people for no reason, begging them for something that serves no public purpose.

Whatever you think of the marijuana thing, it seems initially to arise from a defectively written law. But that great issue, the issue of where you can smoke medicinal marijuana—the burden of that should not be on Gator Ted. The transsexual labioplasty is perfect nonsense. Any sane person understands exactly what was going on when that doctor said that he was not willing to operate on these two transsexual women.

The idea that people should be essentially punished by a system that does not allow them equality with their accuser is a mark of great shame to this province. If there has to be a tribunal, it should be brought within the bounds of normal legal practice and this province’s 800-year legal tradition.

The Chair (Mrs. Julia Munro): Thank you very much. I’ll move on to Ms. DiNovo.

Ms. Cheri DiNovo: Mr. Steyn, if somebody puts a sign up in their store that says, “No Jews Need Apply,” would that be considered okay in your—

Mr. Mark Steyn: We’re not talking about “No Jews Need Apply.” It’s very interesting to me. Even at the time, for example, the famous No Irish Need Apply song, which became a famous hit song in the 19th century that Irish-Americans took up enthusiastically and made one of the biggest hit songs of the mid-19th century—when they actually went looking for “No Irish Need Apply” ads, in

the whole of the United States, they found exactly two. It’s easy to do. You can go now and search the entire archives of the New York Times, the Boston Globe, all the rest of it: There were only two. So even in its day, the “No Irish Need Apply,” “No Jews Need Apply,” “No Muslims Need Apply” was a very rare activity. Today, it’s almost entirely vanished. That’s not what we’re talking about. If you look at the tribunal—

Ms. Cheri DiNovo: But why not, if I might interrupt? If freedom of speech is absolute, your freedom of speech to put in your store window “No Jews Need Apply” or “No Muslims Will Be Served” or “Coloureds Sit at the End of the Counter” is surely covered by freedom of speech.

Mr. Mark Steyn: I think that’s to do with basic equality before the law. I recognize laws of public accommodation. I recognize, for example, that if you have a restaurant, you can’t say that the Jews sit at this table and the Muslims sit at that table.

Ms. Cheri DiNovo: Why not? It’s your freedom, as an individual freedom of speech, to be able to do so.

Mr. Mark Steyn: No, because I think that once you get into the business, as I said, of public accommodation, where you’re offering a service to the public—and again, I think there are exceptions to this. There’s the famous case in Mississauga, the latest to make this system a laughingstock, about the woman who claims she was dismissed as a stripper on age grounds. I’ve never been to this strip club in Mississauga, but it sounds like the top-of-the-line strip joint in town, and obviously they pay better than other strip clubs in that area. Why shouldn’t I go along and say, “Hey, you know something? I’d like to work as a stripper here and you’re discriminating against me on grounds of”—

Ms. Cheri DiNovo: To bring you back to point, though, the point of the Ontario Human Rights Code and of human rights codes generally is to prevent the “No Jews Need Apply” action. Without the Ontario Human Rights Code, without the Charter of Rights and Freedoms, freedom of speech, in its absolute and ultimate form, would rule the day. Clearly, hateful words lead to hateful actions.

Mr. Mark Steyn: No. I would say—this is the classic human rights dodge, by the way, to identify a non-problem that you claim to be solving. Nobody is putting up “No Jews Need Apply” signs. As I said, historically—

Ms. Cheri DiNovo: They are paying women 71 cents for every dollar that men earn, however.

Mr. Mark Steyn: Yes.

Ms. Cheri DiNovo: That is going on. And in fact, they are still spreading a great many hateful words on the Internet—

Mr. Mark Steyn: Yes, exactly.

Ms. Cheri DiNovo: —and they are still denying transsexuals and transgendered folk employment or housing, quite legally.

Mr. Mark Steyn: Yes. Let me just talk about this “hateful words” business. This is again the sham of this

Human Rights Tribunal, in that it does not treat all hate equally.

You claim, for example, to be interested in women's rights. We have honour killings; we have arranged marriages against the wishes of the brides in this province. The Human Rights Tribunal is silent about that. The Human Rights Tribunal accepts implicitly the two-tier sisterhood whereby if you are a western woman and you're fired from the strip joint in Mississauga and you want to kick up a big fuss, they'll take up your case because you're tormenting some hapless white, male strip joint owner. But if you're 16-year-old Aqsa Parvez and you get killed in an honour killing, they accept implicitly that that's a two-tier sisterhood with multi-cultural sensitivities.

1350

Ms. Cheri DiNovo: No, that's simply not true.

Mr. Mark Steyn: No, no. You brought this up, madam. At the time my case came into the news, there was a fellow in Toronto who went on the Internet and explicitly urged the killing of a minister of the crown and Canadian troops, and nobody bothers to investigate him for hate speech.

Ms. Cheri DiNovo: No more questions.

The Chair (Mrs. Julia Munro): Thank you. Mr. Zimmer.

Mr. David Zimmer: Mr. Steyn, there was a well-known, indeed famous, American jurist, Oliver Wendell Holmes, who made a statement in which he expressed his view of the limit on free speech in a case in the 1930s, and I'm wondering if you agree or disagree with this statement. He said that nobody is free to yell "Fire" in a crowded movie theatre.

Mr. Mark Steyn: It wasn't the 1930s; it was 1919 that Oliver Wendell Holmes made that statement. It's interesting, that case. He was an American—

Mr. David Zimmer: I know, but do you agree with that statement or not?

Mr. Mark Steyn: Let me say this for a start: He was upholding espionage charges against an anti-war protester. So by his measure, thousands of Canadian liberals would have been rounded up for protesting the war in Afghanistan.

Mr. David Zimmer: But don't duck the question.

Mr. Mark Steyn: I'm not ducking the question.

Mr. David Zimmer: Do you disagree with that statement or agree with it?

Mr. Mark Steyn: Let me come at it one other way, in which it's not relevant to our discussion—

Mr. David Zimmer: No, no, but then answer the statement.

Mr. Mark Steyn: Because Oliver—

The Chair (Mrs. Julia Munro): Excuse me. Could I just have one speaker at a time?

Mr. Mark Steyn: Oliver Wendell Holmes said that the most stringent protection of free speech would not protect a man in falsely—falsely—shouting "Fire" in a theatre. The problem with the Human Rights Tribunal is that falsely shouting "Fire" is not at issue. It doesn't

matter whether the theatre actually is on fire, because under the Human Rights Tribunal, truth is not a defence.

In my own particular case, no one has ever pointed to a single fact in the Maclean's article, an excerpt from my book, that is inaccurate. So essentially—

Mr. David Zimmer: But back to Holmes's statement, is that a fair limitation on freedom of speech: You can't yell "Fire" in a movie theatre, just as a general proposition?

Mr. Mark Steyn: As I've tried to answer you, I think if the theatre is on fire, you're certainly entitled to point that out. By the way, that, as a metaphor, is simply a ludicrous metaphor. He was talking about gaslight, 19th century theatres. By 1919, the Winter Garden on Broadway—I don't assume you were there for Hitchy-Koo of 1917; I wasn't either—was an electrified theatre, and it wasn't in danger of burning down. The metaphor is lazy and irrelevant.

Mr. David Zimmer: What about this, just paraphrasing Holmes: Nobody is free to yell provocative racial epithets in a multiracial society like Toronto or New York. Would you agree with that?

Mr. Mark Steyn: I think society should have a bias that makes it unacceptable to use, for example, the N-word, as they say down south—

Mr. David Zimmer: How would you enforce that?

Mr. Mark Steyn: —in public, but I think—well, that's the point.

Mr. David Zimmer: How would you enforce that?

Mr. Mark Steyn: A man, a member of the British Foreign—

Mr. David Zimmer: I agree with that. How would you enforce it?

Mr. Mark Steyn: A member of the British Foreign Office was arrested over the weekend for yelling, "Effing Jews. Kill the effing Jews."

Mr. David Zimmer: How would you enforce it?

Mr. Mark Steyn: I don't think he should have been arrested. I think he should be publicly shamed. This is not a hateful province. This is not a jurisdiction where people openly insult and use racist epithets. But what happens when you accord your tribunal the power to regulate speech is that you replace a social ill, people using racial epithets, with a worse ill. It's far worse to allow government the sole power to arbitrate what is acceptable speech or not. If a guy uses the N-word in a bar, I would rather somebody slugged him on the chin rather than him being dragged up before your tribunal.

Mr. David Zimmer: Let me ask just one last question. I understood your point. Your feeling is that an individual right should trump a group right, that you're an absolutist on that point, and I understand that. Now, supposing we have not a group right versus an individual right or individual freedom, but we have an individual right that's in conflict with an individual right of free speech. How would you settle that one? I understand you're saying that in a group right versus an individual right of free speech, the individual right should trump it. Let's take an individual right versus an individual right of free speech. How would you balance that?

Mr. Mark Steyn: I don't understand that question without something more specific. For example, my right to free speech: If I say that you like to dress in women's clothing and go out and pick up truckers on the QEW and that is not true, you have the right to sue me for libel. But if I say, in a more general sense, that I happen to disagree with your political views or whatever, then that's simply a matter of opinion.

Free societies should not be in the business of criminalizing opinion. When you go down that road, all you do is lead to the situation that you have in, say, Saudi Arabia. In Saudi Arabia, you can't start a newspaper and print what you think, so if you object to the House of Saud, the only thing you can do is blow stuff up.

I think, actually, we don't need sensitivity training in this jurisdiction; we need insensitivity training. We need to learn to rub along in a much more agreeable, rough-and-tumble fashion.

Mr. David Zimmer: Just my last thought, then, back to this paraphrasing of Holmes: Nobody is free to yell provocative racial epithets on a busy intersection in Toronto or New York.

Mr. Mark Steyn: I disagree—

Mr. David Zimmer: Would you let that person yell a racial epithet or not?

Mr. Mark Steyn: I think that if someone wants to yell things about Jews, obviously, in this town, they're free to do so. They were yelling explicitly eliminationist, genocidal rhetoric about Jews just a couple of weeks ago on the streets of Toronto, and neither the Ontario Human Rights Tribunal nor the Ontario Human Rights Commission seems in the least bit interested in it. So you are identifying essentially something that is not the business—the Ontario Human Rights Tribunal is not in the business of people shouting explicitly eliminationist, genocidal rhetoric on the streets of Toronto. That's not what this tribunal or its commission does. They couldn't care less about that.

Mr. David Zimmer: Thank you. I think that's it.

The Chair (Mrs. Julia Munro): One minute left.

Mrs. Liz Sandals: I just wondered if we could get a bit of clarification. Is it your understanding that one of the prohibited grounds that the tribunal is dealing with is freedom of speech? It was my understanding that that's strictly a federal issue.

Mr. Mark Steyn: No. I was caught—

Mrs. Liz Sandals: Not the commission; the tribunal.

Mr. Mark Steyn: Yes. I was caught, obviously, in the changeover. Essentially, Barbara Hall, I think, issued her press release about me—

Mrs. Liz Sandals: But you would agree with me that the tribunal has not entered into this area?

Mr. Mark Steyn: Ah. No, no, no. But this is the interesting thing about her press release: She thinks these are exactly the kinds of issues that the commission ought to be bringing before the tribunal, as it does—

Mrs. Liz Sandals: And is it in the Ontario Human Rights Code that this is a prohibited ground—freedom of speech?

Mr. Mark Steyn: I would not read it there as such, but given the expansion—

Mrs. Liz Sandals: So you would agree that this is not terribly relevant to the Ontario Human Rights Tribunal?

Mr. Mark Steyn: No, no, no. Given the expansion of the definition that has occurred in the years since the Taylor decision, and given the commission's own words on the kinds of cases it hopes to bring to the tribunal, I think it's clear that the tribunal will be dealing with essentially freedom-of-expression cases, whatever the Ontario code says, in the years ahead.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes the time that we have available. Thank you, Mr. Steyn, for being here.

Mr. Mark Steyn: Thank you.

ONTARIO FEDERATION OF LABOUR

The Chair (Mrs. Julia Munro): I'd next like to call on Mr. Terry Downey, the executive vice-president of the Ontario Federation of Labour. Mr. Downey.

Interjection: It's Ms.

The Chair (Mrs. Julia Munro): Oh, sorry.

Welcome. Do make yourself comfortable.

Ms. Terry Downey: Thank you.

Interjection.

Ms. Terry Downey: That's okay. The funny story behind that was, because I'm from the 1960s generation, and my father thought that Kelly was a boy's name, they named me Terry, with a "y." I said, "What does he think Terry with a 'y' is?" So yes, you're not the first person to make that mistake.

Good afternoon.

1400

The Chair (Mrs. Julia Munro): Good afternoon. Just to let you know, we have 30 minutes in total, and the time you take then will be deducted from the question time for the members of the different caucuses.

Ms. Terry Downey: Thank you for allowing me the opportunity to speak on behalf of the Ontario Federation of Labour and our affiliates, as well as the community organizations like the African Canadian Legal Clinic, the Metro Toronto Chinese and Southeast Asian Legal Clinic, the Canadian Arab Federation and the Accessibility for Ontarians with Disabilities Act Alliance. I understand that the alliance will make their own presentation to the standing committee later this afternoon. However, for the record, I just want to say that, as you'll note from my bio, I have long experience with the Human Rights Commission, 18 years as a human rights investigator, and human rights has been advocacy work of mine with the federation. I hope the remarks you heard from Mr. Steyn, who I'm informed made some disparaging remarks about me, who's never met me, will not have any bearing on my presentation to you or my credibility today. It's unfortunate that he doesn't afford people the freedom of speech that he wants for himself. In any event, I'm not here to talk about him; I'm here to

talk about human rights and what that means to us here in Ontario.

Human rights are fundamental to any democratic society, and the struggle for these rights has been going on for generations. After 1948, when the United Nations issued its Universal Declaration of Human Rights, human rights statutes became more established in Canada, with both federal and provincial governments. As part of this process of change, and with the ongoing, persistent lobbying of community and union activists like Stanley Grizzle, Bromley Armstrong, Dan Hill and Alan Borovoy, a series of statutes and policies was enacted to promote a recognition of diverse groups and a more inclusive policy, thus the creation of the publicly funded Ontario human rights system in 1962, which included the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario. Its mandate was to enforce the Human Rights Code. On December 4, 2006, the government passed Bill 107, An Act to amend the Human Rights Code. As you know, it was received with mixed reactions by diverse human rights advocates and organizations.

All agreed that Ontario's human rights system required reform, but there was no consensus on the practical implications of the changes proposed under Bill 107. Supporters of Bill 107 believed changes would lead to a more efficient human rights system, where complainants would have direct access to the Human Rights Tribunal. In their view, Bill 107 would strengthen and optimize the Human Rights Commission, not weaken it. Our group, however, questioned the assumption of fair access under the new system and argued that the changes brought about by Bill 107 would weaken the Ontario human rights system. For instance, under Bill 107, victims of discrimination are no longer safeguarded by the free expert service of the Human Rights Commission. This is because complaints are no longer publicly investigated and prosecuted without the cost borne by the victim. Rather, they now have to pay for legal counsel in order to have meaningful access to a system that was intended to be universal.

In this scenario, those with meagre financial resources are forced to choose between seeking justice and financial survival. Sadly, we know all too well that those communities most affected by discrimination are also disproportionately affected by poverty. Over half of the discrimination complaints are on the grounds of disability. Almost another half of those issues are on racialization, citizenship, sex, gender identity, family status, pregnancy and sexual orientation. While Bill 107 may allow complaints to be made directly to the tribunal, only those with financial means, in our view, would be able to do so.

Although Bill 107 does not exclude the commission from the complaints process, it has reduced the staff from 200 to 60 and severely constrained the commission's ability to meet the needs of those it is supposed to serve. In effect, Bill 107 has privatized the Ontario human rights system. Not only did Bill 107 eliminate the free investigative services of the commission, it has also re-

vised the administrative and operational functions of the commission and eliminated staff. So in theory, the commission maintains its ability to bring forward a complaint on its own or intervene in individual complaints, but the reality is that there is simply not enough staffing and infrastructure to do so, and despite fewer resources, the commission is still charged with following that mandate.

How are they going to take proactive measures to address systemic discrimination through public education, promotion and public advocacy, research and analysis without the proper staffing levels and no investigators to help them do that? Also, how are they going to be able to examine, review and make recommendations on any new statutes or regulations, and any program or policy that the commission feels is inconsistent with the intent of human rights legislation; to review discrimination problems that may arise and encourage coordinated plans, programs and activities to reduce or prevent such problems; or to promote, assist and encourage groups or persons to engage in programs to alleviate tensions and conflicts upon identification by prohibited-grounds discrimination? With only 60 staff serving all of Ontario, how can the commission possibly fulfill those critical responsibilities?

So in theory, Bill 107 established a human rights legal support system, independent from but accountable to the government of Ontario. The purpose of this centre is to provide supportive services, including legal services, with respect to the applications under the code. The centre's services are supposed to include advice and assistance, legal and otherwise, with respect to the infringements of rights under part I of the code, and these services are supposed to be provided throughout the province. Presently, we know that there is only one single legal support centre serving the needs of all Ontarians. Although we are aware that the legal support centre has set up some resources in locations outside Toronto, many human rights advocates are skeptical that these services are adequate, especially for those outside the greater Toronto area, where the centre is located. In fact, anecdotal evidence shows that Ontarians are still seeking assistance from legal clinics in filing complaints. Some of the clinics are sending people back to the legal support centre. Others are trying to continue to assist clients whose first language is not English.

The full-time human rights director of my organization, the Ontario Federation of Labour, continues to assist both unionized and non-unionized workers with complaints simply because the initial paperwork is overwhelming and clearly a barrier to many individuals in terms of accessing the tribunal, especially for newcomers and those for whom English is a second or third language. It should be noted that the centre, such as it is, only opened its doors, as you know, on June 30 of last year, a mere seven months ago, and we're expected to know whether or not it's going to work. We can surmise that it's not, and it's probably going to continue down that path because, similarly, Bill 107 was also supposed to establish new anti-racism and disability rights secretariats. Both of those secretariats were to undertake, direct

and encourage research into discriminatory practices on the basis of race and disability. They were supposed to facilitate the development of provisions of public information and education programs intended to reduce and eliminate discrimination practices in those areas. To date, neither of these secretariats is up and running. This delay sincerely calls into question the Ontario government's commitment to equality.

Our goal as human rights activists is to make sure that the Ontario human rights system is inclusive, accessible and works effectively for all victims of discrimination and harassment, but with inadequate statistical data it's difficult to assess the effectiveness of this system and determine whether it is fulfilling its mandate. While we appreciate the information we've received from Kathy Laird of the Human Rights Legal Support Centre and the Human Rights Commission staff who assisted us with answering some of our queries on legitimate concerns that persist—Here are some of the concerns that still persist with us:

—Does the system address the financial and power imbalance between individual complainants with limited resources and well-funded employers in both the public and private sector?

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—What were the outcomes of many of the cases that were filed with the Human Rights Commission prior to the enactment of Bill 107?

—Are all complainants in a position to access the independent legal counsel that this government promised in a timely, expedient manner, even if there is not income testing?

—Is the new system too difficult for every citizen to access and navigate on their own without the assistance of a lawyer?

—Are complainants giving up because of red tape that causes confusion in the complaints process?

—Are cases being filed or abandoned because of delays due to inadequate staffing, inadequate funding or general limits on accessibility?

—Are complainants receiving funding for expert witnesses?

—Is geography a barrier to those seeking legal support through the legal support centre, especially for those who live outside greater Toronto, where the centre is presently located?

It's widely acknowledged that Bill 107 weakened the disabilities access legislation that the AODA and others lobbied the government to implement. Premier Dalton McGuinty promised to implement a disabilities law with effective enforcement through the Human Rights Commission process, yet Bill 107 removed the Human Rights Commission's enforcement abilities, stripped the entire investigative staff and cut the legal department in half. What's now being done about enforcement?

The Accessibility for Ontarians with Disabilities Alliance, the African Canadian Legal Clinic, the Metro Toronto Chinese and Southeast Asian Legal Clinic, the Canadian Arab Federation, the Ontario Federation of Labour, its affiliates and labour councils worked together

to challenge the pernicious aspects of Bill 107. Together we lobbied, attended meetings and made numerous presentations to this government. We agreed that the Ontario human rights system needed revamping, but we insisted that any changes must be brought about through meaningful and inclusive input from the communities, organizations and unions that represent victims of discrimination on a daily basis.

Instead, Ontario's new Human Rights Tribunal has set up a new set of complicated rules that are difficult for unrepresented persons to navigate. There is now a new longer, more detailed application form that poses challenges even to specialists. Incorrectly completing a form can jeopardize the viability of a case, making legal counsel a prerequisite in practice, if not in law, to pursuing human rights. Far from improving access, in our view, these and other changes have created new barriers and restricted access to those seeking basic fairness in their lives.

Despite these obstacles, we continue to encourage victims of discrimination to access the system. But in the absence of government leadership, we hope that the public and the media assist us in monitoring the effectiveness, or quite frankly the ineffectiveness, of the new system. Premier Dalton McGuinty promised that he would deliver a fair, inclusive and accessible human rights system for all Ontarians, but as it stands, the system falls woefully short of this goal. We urge the Ontario government to take meaningful action to redress this issue we have raised and ensure that the system works for all those in need, regardless of their personal, social or economic capital.

I respectfully submit this on behalf of the Federation of Labour and the communities that are laid out in my brief that have supported this presentation.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin with Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, Ms. Downey, for that report. I couldn't agree more with all of it.

We heard this morning some testimony to the effect that legal counsel was not necessary in coming before the tribunal—that certainly complainants could defend themselves and make their cases quite well. There was, I think, quite an egregious lack of statistics in terms of who did come before the tribunal with or without counsel, either respondent or complainant. We've asked for that to be tabled with the clerk because that should be pretty simple to access. What do you think about what we're seeing here at the tribunals: a new way of doing law that doesn't absolutely need lawyers to make fair and equitable decisions?

Ms. Terry Downey: There's a saying that only fools will represent themselves as lawyers. I would say the same thing about human rights lawyers. It was a legal, complicated system before the changes to the rules of the tribunal and, as I said in my presentation, it's even more complicated now. An everyday layperson who is trying to address a wrong, that they feel they have been violated, who's trying to focus on that, who may not under-

stand the rules and procedures of the law, is definitely going to be frustrated and will find complications in how they would be able to deliver effectively. Even I, and I feel I know human rights a lot because I've worked in it for 18 years and had to read that piece of legislation almost every day and apply it to cases, would never represent myself at a human rights tribunal. It does not make sense. That's why in the past you had lawyers going forward, publicly funded, to help deliver the case on behalf of the government and the Human Rights Code in terms of making sure that folks were dealing with it from a third party process, and then the individual remedies would be redressed by the tribunal. I think it's no different now. Why should it be? So to those who are trying to say that perhaps you don't need a lawyer: Time will certainly tell about that, but in my experience and my knowledge of the law, you would certainly need a lawyer to navigate yourself through the process.

Ms. Cheri DiNovo: Apparently 60% of the complainants do not have a lawyer right now. This is a figure that we've heard. In your experience of dealing with complainants at the OFL who go forward under the new system, what has been your experience, on a case-by-case basis, of what's happened to them and if they've received redress or not?

Ms. Terry Downey: Our experience is, first of all, that they don't even know how to get access to the system or about the new procedures. They come to us because the federation, to them, sort of represents everything. We're spending an awful lot of time sitting down with them, as the commission would have done, hearing about what their issue was, whether or not it meets the ground of discrimination, what evidence they have to support their claim, and then spending a lot of time trying to direct them as to how they need to navigate themselves through the system, and sending them, quite frankly, to the legal support centre and to the tribunal. Whether they actually go there, I don't have stats on that. We asked for stats from both the tribunal and the legal support system and we got some vague results.

Ms. Cheri DiNovo: Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. Ms. Sandals.

Mrs. Liz Sandals: Thank you, Ms. Downey. I understand from the information you gave us that you actually used to work at the commission. I didn't hear in that intro whether you actually have any experience appearing before the Human Rights Tribunal since the new legislation came in effect. Could you tell us if you have any actual experience appearing before the tribunal?

Ms. Terry Downey: No, I don't have any experience appearing before the tribunal in the new system.

Mrs. Liz Sandals: Okay. The material indicates that you're representing the Ontario Federation of Labour today.

Ms. Terry Downey: Correct.

Mrs. Liz Sandals: My recollection is that when we were discussing the new legislation, one of the formal concerns of the Ontario Federation of Labour and other labour stakeholders was a concern I've observed under

the old commission: that you could sometimes have a labour grievance that was unfolding and at the same time have a complaint to the tribunal—under the old case, the commission—that this could sometimes be a problem and that this gets sorted out. When we talked to the chair of the tribunal this morning, he spoke to us about the deferral rules, so that you're not having these two things going on at the same time, and that the labour union grievance procedure would be allowed to unfold first. I wonder if you could comment on your experience with that. Has that deferral rule under the new tribunal been working for labour, that the grievances are going forward first?

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Ms. Terry Downey: It's, I think, still too early to tell because we've only been seven months or so into the system. In terms of whether it's going to work, certainly deferral is much better than not having the matter go to a human rights process, period, because that's what used to happen, right? If there was another process, it got kicked to the curb because the commission didn't have enough resources to let the case sit there and deal with it. We haven't had an argument about that; it's the system in terms of other aspects of enforcement that we've been very concerned about, that our voices haven't been heard about, and it remains to be seen whether or not that will be a problem for labour.

Mrs. Liz Sandals: But at this point any experience that you have in terms of the grievance and the deferral issue is that today—and we all understand that this is a transition process, that we're only seven months into the process, and we all understand that the tribunal is just rolling out under this different regime—that concern that was brought to us as the primary concern by labour stakeholders is that in fact you're finding that those deferral rules aren't working.

Ms. Terry Downey: As I said, we're still encouraging folks to do both. As for it being problematic for unions who have to represent their members, we've not heard complaints yet.

Mrs. Liz Sandals: Okay, thank you.

The Chair (Mrs. Julia Munro): Ms. Elliott.

Mrs. Christine Elliott: I just have one brief question, Ms. Downey, and then I think my colleague Mr. Hillier has a few questions. I think, certainly, the theme that we've been hearing from all of the presenters today is how interconnected the tribunal is with the commission, with the legal support centre. I'm particularly interested in the role of the commission and how it works with the role of the tribunal in bringing forward issues of systemic discrimination. That was something that was a concern when we had the Bill 107 hearings as to how that would work since the prosecutorial duties were being removed from the commission. The question was: What would be the linkage between the commission and the tribunal so that the commission would be sufficiently informed what was going on with matters actually before the tribunal to be able to spot these trends? Can you tell me what, in your experience, has happened with that?

Ms. Terry Downey: I still don't know how the commission's going to be able to do that part of the legislation that requires them to do that because they have no staff who would be part of helping them to monitor that. They have some policy analysts, they have clerical staff and they have senior management staff there now. To be able to actually monitor cases that are going before the tribunal and intervene or even take cases yourself, you have to be able to be knowledgeable about the case, have information about the case, gather evidence about the case. There are no investigators. There's no staff there that would do that kind of enforcement that would help those decision-makers at the commission build that case and be able to assist the tribunal on the systemic barriers and to do that research. They have a number of policy analysts who may be able to do that for some huge, widespread systemic cases because it would look bad if they didn't, but how they're going to be able to achieve their goal, as I said in my brief, is, for me, mind-boggling, because again, I worked there and I know how much time it took for staff to do the work that it did when it had 200 staff. Now it has less than 60. There's no way it can meet the government's obligations.

The Chair (Mrs. Julia Munro): Mr. Hillier.

Mr. Randy Hillier: You mentioned earlier—you used the term “privatized human rights.” When I look at this, of course, we have three heads to the human rights hydra now: the tribunal, the commission and the support centre—and all of them are funded on the public purse. They fund complainants and the public pays for it all. The only one who doesn't get any public support, of course, is people who have been alleged to have made—an allegation of discrimination or whatever. I think that using that term, although it may sound right or may sound pretty—“privatized human rights” is nowhere near the actuality. We're paying significantly for it, dollar-wise.

But I wanted to ask a couple of things regarding human rights and what we've seen and heard, and how you square this one. The Human Rights Tribunal, and you've spoken quite critically of it since the bill first came before the House, does not use the tenets of civil rights, the concepts of “innocent until proven guilty,” “due process before the law”—there's a whole series of civil rights that it disregards in its quest for human rights. I'd like to just ask you: Do you think we can ever possibly find equitable, fair outcomes in human rights tribunals if we disregard those tenets of civil rights?

Ms. Terry Downey: In terms of finding a fair outcome, you have to have the evidence to be able to take before a tribunal to say, “This is why I was discriminated, and this is what the law states with respect to my rights as a person who is entitled to be protected and free from discrimination.” The tribunal is going to hear what information is put before it, which may not be the whole story. There are complicated rules that say that they get to determine what information is brought forward. It's totally different than what happened in the previous system before Bill 107, where you had someone who

would come forward with an allegation, you had publicly funded enforcement officers through the commission who would do the legwork and the investigation, and say, “This case merits going before a tribunal because it does have evidence to support discrimination under the law,” or, “It doesn't.” Right? Yes, it might have been nice to have direct access, but there is that fundamental difference where if you don't have that, there's no way of knowing.

That's kind of what brings me back to your first comments. The system, in our view, is privatized because previously, you had all of the elements of people not having to go out and pay for someone who's going to—before they maybe even get to the legal support system or after they get to the legal support system, if they can get some resources and help there—build a case through gathering evidence and information, which is doing an investigation, which they're going to have to pay for. There are no investigative powers or enforcement—

Mr. Randy Hillier: I think we're going a little bit off the track.

Ms. Terry Downey: No, you brought it up, in terms of saying that the system is not privatized. Someone who really wants to be sure that they have a successful complaint go through the tribunal will have to pay someone out of pocket, whether it's a lawyer or someone who does human rights law, to help them gather that evidence so that they can be successful, hopefully, at a tribunal.

Mr. Randy Hillier: My question, though, is about the civil rights, and I think I've got the answer—

Ms. Terry Downey: We are dealing with human rights legislation under the Ontario Human Rights Code.

Mr. Randy Hillier: I'd like to just read a couple of comments, because our Human Rights Tribunal has come under significant scrutiny within the media and within the public at large. There are a few comments here, and I think this goes back to this squaring of civil rights with human rights, where we have disregarded those tenets of common law and our justice system—

The Chair (Mrs. Julia Munro): Mr. Hillier, you have, like, 30 seconds. Choose which one you're going to tell us.

Mr. Randy Hillier: Thirty seconds is not enough. Thank you.

Ms. Terry Downey: I thought I was talking about human rights here today, not civil rights.

Mr. Randy Hillier: They're connected.

The Chair (Mrs. Julia Munro): Thank you very much for appearing before us today.

Ms. Terry Downey: Thank you.

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CANADIAN ASSOCIATION OF COUNSEL TO EMPLOYERS

The Chair (Mrs. Julia Munro): Our next deputation: Patty Murray and Gita Anand. Good afternoon, ladies, and welcome to the Standing Committee on Government

Agencies. As you will have noted, we have 30 minutes, and you may use that time in the presentation. Whatever time remains will be divided amongst the caucuses for questions and comments. As soon as you're ready, please introduce yourselves for the purposes of Hansard. You may begin when you're ready.

Ms. Patty Murray: My name is Patricia Murray and I'm from the law firm of Hicks Morley. I'm here with a colleague today, Gita Anand.

Ms. Gita Anand: I'm here as part of the organization CACE, the Canadian Association of Counsel to Employers.

Ms. Patty Murray: As Ms. Anand has indicated, we're both appearing this afternoon on behalf of CACE. CACE is a national organization with a very broad membership. Our members represent thousands of employers in the province of Ontario. So I come here, I would say, wearing two hats, one of which is making some submissions on behalf of CACE. As well, I'm the chair of the human rights practice group at Hicks Morley. I have, I would say, fairly extensive practical experience, both working and litigating at the commission and now litigating at what I would say is the new, reinvigorated tribunal.

The employers that CACE represents: They represent a significant component of stakeholders who actually use and participate in the human rights system. In terms of my practice, I represent both employers who are respondents in the human rights system as well as other organizations; for example, service providers, who also may be named as respondents in a human rights application.

I think I'll be fairly brief today. I will be brief because the experience to date is quite limited. I want to preface my remarks by saying that I think it's very early days yet for the new tribunal, and certainly very early days in terms of all of our collective experiences with this new direct-access model. It's really too early to have real, substantive concerns or comments about the efficacy of the new tribunal, but the employer in the respondent community certainly has some comments to share as a result of its experiences. I'm really confining myself to the last seven months, since June 30, 2008.

We've done a survey of our members in terms of their experiences to date. I'll just break it into two areas. It really revealed two broad themes.

I think the first broad theme is that there has been recognition that the tribunal has performed positively in a number of areas, versus the experience of respondents under what I would consider the predecessor scheme. I think it's fair to say that the universal view is that, so far, the experience is that this tribunal is a much more effective mechanism for the enforcement of human rights and dealing with human rights and responding to human rights than the old commission-based system.

There are three areas of really positive comments from the membership, and then I'll touch on two areas that remain an area of concern for respondents who appear at the tribunal.

The first one really deals with probably the lead-up to the June 30 date. Obviously, you've heard from enough stakeholders and individuals that you know how transformative the changes are. The nature of those transformative changes, I think, caused a lot of concern for a lot of different stakeholders, and certainly some concern as well for the respondent community. But I think there's fairly universal appreciation for the efforts that the tribunal undertook in the consultation process leading up to June 30. There was an extensive, in-depth consultation process.

The perspective of respondents was that this process was open, that it was transparent, and there was certainly a sense that there was an opportunity to have meaningful input into the consultation process. There was certainly very broad-based community outreach, and the tribunal made itself very accessible to employers and to the employer side of the bar, the employment bar. I'm not sure that many employers availed themselves of those opportunities through the process, but the opportunities were clearly extended and there was a mechanism to be heard. Some members of the respondent community, the legal community, including my firm, took advantage of those opportunities. That was certainly a very positive development, from our perspective.

The second area that I want to touch on is positive from a negative perspective, if I can say that. What I want to touch on is the new process in terms of some of the challenges that we've seen.

You've probably heard some comments about the paperwork inherent in the new process. I think there are some challenges, because there have been a number of what I would consider housekeeping issues in terms of a lot of folks working with new forms, with new deadlines, with new requirements. I think it's fair to say there has been a lack of clarity around some of that; sometimes we get mixed messages. But when I say it's a positive coming out of a negative comment, what I mean is that there's certainly a fairly unanimous view that notwithstanding those housekeeping challenges, the conclusion is that the tribunal really does have good customer service in terms of working with the stakeholders to come up with solutions to the problems posed by some of the forms. When there are mistakes made, when there is confusion and when there is difficulty with deadlines or filing dates and it's not clear as to how the matter should proceed, our experience is that there is very open dialogue, that there's always someone on the other end of the phone to give you some advice, and we've been quite successful in working with people at the tribunal in order to move forward in terms of the particular application that we're responding to.

The third what I would call positive comment is that those of us who practised in what I would call the old commission model have a real respect and appreciation for the tribunal's stated mandate that applications will be dealt with expeditiously. It's not in anybody's interest, whether you're an applicant or whether you're a respondent, to have a matter drag on for years and years and years. This new process is certainly moving com-

plaints or applications through the stream at a very rapid pace. That commitment, and the ability of the tribunal to respect that commitment, is really in the best interests of all of the stakeholders.

Again, as I started out with in my submissions, certainly it's early days yet, but the process and the procedures for moving those applications quickly through the system seem to be working. The process and the procedures and the rules that have been enacted so far seem largely flexible and very responsive to the cases that are coming on, that we are defending respondents on.

Those are the three areas of what I would say are very positive comments. There are two issues of concern to the employer community. I don't think either of these two areas is going to be much of a surprise.

There is one gap in the rules and the manner in which complaints or applications are being handled that seems to be a significant concern. Right now, we're all struggling with what we see as an apparent lack of a mechanism to quickly dispose of cases at the front end that appear very unmeritorious or vexatious—not unmeritorious, but vexatious and frivolous—on their face. I know the tribunal has provided for a screening mechanism whereby they are supposed to be able to quickly dispose of cases that aren't within their jurisdiction. The difficulty is that there is, I think, a concern about how that screening mechanism is functioning. Right now, the rules require employers or respondents to applications to plead on the merits of these types of applications. As you can imagine, there can be a very significant amount of time, effort and cost associated with dealing with a complaint or an application that, on its face, is very clearly vexatious or frivolous, where it doesn't even appear, for example, that there was really any *prima facie* case or ground properly pleaded. That's very time-consuming and costly for respondents. Obviously, it is especially a very significant issue for smaller respondents or smaller employers who have to spend the time in responding to these types of applications. So there is definitely a consensus within the respondent community that the tribunal needs to establish a better process to avoid abuses of its procedure.

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The second one that really is related to what I've just said is an issue with respect to costs. Obviously, the legislation is silent with respect to the ability of the tribunal to order costs. The tribunal can only order costs pursuant to the SPPA if it sets that jurisdiction out in its rules. The rules do not provide that, so at the moment you've got employers or respondents who are faced with perhaps very frivolous cases where they've spent some time, money and resources and yet potentially with no ability to have any kind of remedy at the end of the day where there is a frivolous complaint or indeed a totally unmeritorious complaint. So there is certainly no threat of sanction for individuals who may choose to abuse the system.

Those are the comments that I have. Ms. Anand and I are both happy to answer questions, which is one of the reasons she came with me on behalf of CACE.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin over here with the government. Mr. Zimmer.

Mr. David Zimmer: I just have three questions around the issue of deferrals. The chair told us this morning about the rules that the tribunal has to deal with, this idea of a complaint that's made to the tribunal and there's also substantively the same complaint before the police complaints commission or the landlord and tenant body. What's your experience? How are these deferral rules working?

Ms. Patty Murray: I've had mixed success. I've had fairly good success on the issue where there's a deferral to the grievance arbitration process. I've had one or two other cases not so successful where, when I've received an adjudicator's decision, they've decided that the other process will not actively engage the human rights analysis and so they've chosen not to defer. But in terms of the grievance arbitration process, which is one of the questions I heard asked of one of the earlier presenters, I think that so far it has been a good process and that the deferral has worked to push the parties back to the private process.

Mr. David Zimmer: What is your understanding of the substance of the deferral rules? What's the test that has to be met to have a matter deferred to another body?

Ms. Patty Murray: Whether the issues litigated are the same issues, and under the grievance arbitration process it's fairly clear that arbitrators have the jurisdiction to interpret and apply the Ontario Human Rights Code, and often workplace parties would prefer to proceed down that route.

Mr. David Zimmer: How is the mediation process working?

Ms. Patty Murray: The mediation process has been quite effective. Obviously the fact that we get to a mediation very quickly allows the parties to really turn their minds to whether or not a resolution is possible in a very short period of time, perhaps before parties get entrenched or before parties have spent a lot of time, money and resources in engaging in their position.

Ms. Gita Anand: And the fact that vice-chairs are doing the mediation makes a difference, I believe.

Ms. Patty Murray: Absolutely. Under the old commission model, obviously, it was just the mediators.

Ms. Gita Anand: It was not the vice-chairs.

Mr. David Zimmer: This is more of a delicate question: How are you finding the effectiveness of the slate of new adjudicators?

Ms. Gita Anand: So far, so good. I haven't had a full-blown hearing, but in terms of the mediations, the vice-chairs are doing a good job. One of the lawyers in our office had a jurisdictional dispute and found that the hearing process went very well.

Mr. David Zimmer: The chair told us about the extensive consultations leading up to the tribunal—that is, before June and so on. Are those consultations continuing as they're sorting out administrative issues that they encounter as they're developing the work of the tribunal?

Ms. Patty Murray: No, I'm not aware of that. I know that right now the tribunal is in the process of developing or setting up an advisory committee, which will advise the tribunal on issues of practice which will, I believe, draw from stakeholders at large. That's probably the forum where that issue, in terms of the actual practice, will be addressed.

Mr. David Zimmer: I don't know if I have time.

The Chair (Mrs. Julia Munro): There's a minute, if you—

Mrs. Liz Sandals: I'm fine.

The Chair (Mrs. Julia Munro): Okay. Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here. You mentioned a couple of things. One was the lack of a threat of sanction for people bringing forth malicious or vexatious allegations. Do you think that having some possible sanction would be a significant improvement to the Human Rights Tribunal processes?

Ms. Patty Murray: I think that there should be a cost consequence associated with pressing a case to the very end. In certain circumstances it might be appropriate. Under the old legislation, there was a section which provided a very onerous test. I'm not suggesting that I would be proposing any particular test, but to be left without any ability to recoup costs, no matter how egregious the case, is a problem for our members.

Mr. Randy Hillier: Yes. I would agree that without any consequence for actions, it's a free and open ride to allege anything. So I see that as a significant shortcoming as well.

What about—and we've seen it with a number of cases that have gone before human rights tribunals and commissions in this province—the publicly funded opposition or complaint and the privately funded defence? What's your thought and view? We've seen where the cost to defend yourself in the Human Rights Tribunal can be so onerous that, really, justice can't be found on many occasions. It's better off to settle even though you may be totally without fault or without contravening the Human Rights Code, but you're still going to pay because it's just too onerous and too expensive to defend. Could you comment on that?

Ms. Patty Murray: That was certainly the experience in the past by the time you were at a tribunal, because typically you were talking many, many years before you got to a tribunal. I think that now with the new streamlined process, respondents may be more prepared to vigorously defend themselves on their principle because the hope is that they will get to a tribunal hearing more quickly, that it will be a more flexible, informal process and that they won't spend the same amount of resources to get there. I'm not sure if that answers your question.

Mr. Randy Hillier: A little bit. But when I look at the equation here, the scales of justice, on the one hand we have a publicly funded allegation, with no sanctions possible or consequences for improper use of the tribunal, and then an individual who's left alone out on the other side with no support. That's certainly not a balanced equation, in my view. Even though the new

system may be a significant improvement, it was clearly out of whack significantly before. Do you believe that it will be better under this system? It may only be a year now to get a ruling out of the tribunal instead of multiple years. Do you think that's a balanced approach to our Human Rights Tribunal?

Ms. Patty Murray: I'm not sure I know what the right answer to that question is. I can only compare it with past experience, which is that I think that the pendulum is moving in the right direction from the perspective of respondents. I think that's the only way I can answer that question.

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Mr. Randy Hillier: There has been a lot of criticism levelled at the human-rights tribunals and commissions and the whole bundle of quasi-judicial approach to human rights. There's one quote here from in the paper, "the only remedies we can hope from the bureaucratic proliferation of kangaroo courts—'human rights' tribunals and the like—staffed by truly frightful people, whose ideological frothings are neither subtle nor fully sane." And there's a whole series—that's from the Ottawa Citizen a little while back.

Do you believe that this system, as it has been changed, will reduce the number of complaints about the human rights system, in that maybe one day this institution of Ontario's won't be considered a kangaroo court by many of the citizens in this province?

Ms. Gita Anand: Yes, I think the fact that it's a direct-access tribunal will help speed up dealing with complaints. A lot of the criticism that was levelled against the commission in the past had to do with the inordinate delay. Once a complaint was filed, it would be lost in a black hole for years and years. I think that if matters are dealt with expeditiously, that will take away a lot of the criticism.

Mr. Randy Hillier: However, we still have that significant shortcoming as well, that frivolous and vexatious complaints can come forward and turn hard-working small business people into victims of our justice system with no consequence to those making the complaint. That's all my questions.

The Chair (Mrs. Julia Munro): Ms. DiNovo?

Ms. Cheri DiNovo: Thank you, Madam Chair. Thank you for coming and deputing before us. You're a lawyer and, I'm sure, a good one, and you act on behalf of the respondents in these cases. I would just ask, because we've been having a hard time finding out how many of the respondents have lawyers versus how many of the complainants have lawyers when you go into hearings: Have you found yourself often being a lawyer for the respondent up against an individual representing themselves on the other side?

Ms. Patty Murray: My experience is mixed. I think it's both. Bear in mind, we're not really at a hearing stage under the new process. We're slowly moving towards the hearing stage, but in my experience, it's been both.

Ms. Cheri DiNovo: A little bit of both.

Ms. Patty Murray: A little bit of both.

Ms. Cheri DiNovo: When you look forward—and you heard Terry Downey and her deputation from the Ontario Federation of Labour. Our concern, in the NDP, is getting some fairness, in a sense, for the people who are opposed to you, the applicants or the complainants in this situation. Obviously, I would hope, as a member of the bar, that you would hope for access to legal counsel for both sides of any hearing. Is that your opinion?

Ms. Patty Murray: Yes. I have found that when there have been applicants that have been unrepresented, they come into this process usually with a good understanding. The tribunal's process is fairly accessible in terms of the website, in terms of explaining what needs to be done. There's a lot of paper out there that explains to both applicants and respondents how the process will work. I haven't heard that complaint. I've had applicants who've had the assistance of resources through the legal support centre who have come, either with somebody from the legal support centre or having consulted at the legal support centre. My perspective is obviously a biased perspective, but I haven't seen a difficulty with that yet.

Ms. Cheri DiNovo: Apparently only about 20% come through the legal support centre and about 60% of the complainants are without legal counsel. That's a concern. You earn your fees. I'm sure you're good at what you do. Presumably the reason you earn your fees is that it's better to have you there than not. Our concern is, of course, for the complainant who doesn't have the means to hire a lawyer. It's out of their ability. Do you see a problem in that structure?

Ms. Patty Murray: That structure wasn't really any different than the structure which existed before in terms of complainants using the commission system on their own and representing themselves through the system.

Ms. Cheri DiNovo: But before, they had someone working on gaining evidence—you heard Ms. Downey's deputation—looking into the case, providing them with evidence etc. etc. So they don't have that now. It seems that precious few of them have legal counsel, certainly the kind of legal counsel that's going to follow them right through. They might have some consultation but not something that's going to carry them through the entire process. Again, in terms of fairness from a more general—I know I'm asking you to look at the bigger picture here. As a lawyer, don't you think that they need to be represented?

Ms. Patty Murray: Not necessarily, no.

Ms. Cheri DiNovo: Not necessarily. Would you say the respondent needs to be represented?

Ms. Patty Murray: Not necessarily.

Ms. Gita Anand: Not necessarily. Many of them don't hire legal counsel; they act on their own behalf.

Ms. Cheri DiNovo: It will certainly be interesting to see, when we see the statistics, how many respondents have lawyers versus how many complainants have lawyers, because that's certainly a concern.

You heard her testimony too. Is there anything that you would agree with in her deputation or do you think that it was incorrect?

Ms. Patty Murray: She just has a different perspective, I think, in terms of the efficacy of the commission. I've done this work for 20 years and I have a different perspective on the commission and its efficacy in enforcing the code.

Ms. Cheri DiNovo: Of course we're dealing with the very short term too, so it's difficult for the other side to comment. Thank you very much.

The Chair (Mrs. Julia Munro): Thank you very much for being here today. We appreciate you coming and the comments that you've been able to provide to us.

RICHARD MOON

The Chair (Mrs. Julia Munro): I would just like to make sure everyone understands that our next speaker is coming to us via teleconference. Good afternoon, Mr. Moon.

Mr. Richard Moon: Yes, I am here.

The Chair (Mrs. Julia Munro): Yes, thank you very much for making yourself available this way for us. As you might have had explained to you, we have 30 minutes set aside in which you are able to make a presentation. Any time remaining then will be used by the members of the committee to ask questions and make comments. If you are ready to proceed, we are as well.

Mr. Richard Moon: Thanks for inviting me to speak to you and for accommodating me in this way. I want to make sure you can hear me all right.

The Chair (Mrs. Julia Munro): Yes, we can.

Mr. Richard Moon: Okay. I assume that I was asked to speak to you because I recently wrote a report for the Canadian Human Rights Commission dealing with section 13 of the Canadian Human Rights Act, and that's the section of the act that prohibits Internet hate speech, understood as communication that is likely to expose the members of an identifiable group to hatred or contempt. In a minute, I'll say something about my report and its recommendations, but first I wanted to comment on the current debate in Canada concerning the regulation of hate speech in human rights codes.

Let me start by saying there is certainly a serious debate to be had about the legal regulation of hate speech, about whether it should be regulated, about the scope of regulation and about the legal mechanisms for regulation. But the debate in Canada has been infected by a style of political comment that's relatively new in Canada but better known in the US. There are a number of right-wing critics in Canada who, instead of offering serious and plausible criticism of the Human Rights Code regulations, engage in baseless personal attacks. Without compunction, they accuse the civil servants who are mandated to implement human rights legislation of corruption. They use the term "corruption" freely and very loosely, but always in a way that suggests a significant breach of public trust. The accusations have no substance; they are pieced together out of nothing. But what they achieve, what the commentators want them to

achieve, is a general sense that there is a serious problem, even if the specifics of the problem are unknown.

I suspect that my invitation to speak to you today shows that these commentators have been successful in their smear campaign against human rights commissions. I urge the committee not to be taken in by these individuals. They don't care about the truth; they make things up.

I want to give an example of this. The night before my report was released in November, Ezra Levant posted on his blog a comment about the report. The title of his posting was, "Richard Moon's Report Was Redacted by Jennifer Lynch." Jennifer Lynch, as many of you may know, is the chief commissioner of the Canadian Human Rights Commission. The claim or suggestion was that the report was not my own work, that I was told by the commission what to say. The claim was false—I was given complete independence—and when my report was released the following day and recommended the repeal of section 13 of the Canadian Human Rights Act, the falsity of Levant's claim was obvious. Levant had just made it up. He thought he knew what I would say and he sought to discredit the report in advance by attacking me and the commission rather than the arguments I might make. Had I recommended something different, that section 13 be retained with certain amendments—a perfectly reasonable position—then Levant's false claim about the report might have seemed plausible to some people, and it would have been difficult for me to refute decisively.

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This is his general style and that of others. Over the last few years, these commentators have made a series of baseless accusations against the members and staff of the Canadian Human Rights Commission, and these claims have leaked into the mainstream media, into the National Post and into the columns of the Globe and Mail. Believe none of it. As I said at the outset, there are some serious questions to be addressed, but I have come to the conclusion that certain individuals who have played a large role in the campaign against human rights laws and human rights commissions, particularly in the context of hate speech, have no interest in serious debate or in the truth.

In my report, I took the position that "censorship by the government should be confined to a narrow category of extreme expression—that which threatens, advocates or justifies violence against the members of an identifiable group, even if the violence that is supported or threatened is not imminent. The failure to ban the extreme or radical edge of discriminatory expression carries too many risks, particularly when it circulates within the racist subculture that subsists on the Internet. Less extreme forms of discriminatory expression, although harmful, cannot simply be censored out of public discourse. Any attempt to exclude from public discourse speech that stereotypes or defames the members of an identifiable group would require extraordinary intervention by the state and would dramatically compromise

the public commitment to freedom of expression. Because these less extreme forms of discriminatory expression are so commonplace, it is impossible to establish clear and effective rules for their identification and exclusion. But because they are so pervasive, it is also vital that they be addressed or confronted. We must develop ways other than censorship to respond to expression that stereotypes and defames the members of an identifiable group and to hold institutions such as the media accountable when they engage in these forms of discriminatory expression."

I also took the position that "a narrowly drawn ban on hate speech that focuses on expression that is tied to violence does not fit easily or simply into a human rights law that takes an expansive view of discrimination, emphasizes the effect of the action on the victim rather than the intention or misconduct of the actor and employs a process that is designed to engage the parties and facilitate a non-adjudicative resolution of the 'dispute' between them."

Finally, I argued that the process, through the commission and tribunal—and, of course, within the Canadian system, it continues to be the case that the commission performs a filtering function—put too great a burden on the complainant. "Hate speech harms the group and the community. It is a public wrong. The state, not private citizens, should be responsible for the enforcement of the law." The process is too costly to the complainant, not just in terms of time and money, but because the speech that is caught by section 13 of the Canadian Human Rights Act is so extreme in character, complainants have sometimes been subjected to threats of violence.

I recommended the repeal of section 13 so that the Canadian Human Rights Commission and the Canadian Human Rights Tribunal no longer deal with hate speech, and in particular hate speech on the Internet. Hate speech should continue, in my view, to be prohibited under the Criminal Code.

Now, the question is whether any of this has any relevance to your hearings on the Ontario code and the process established under it. There is no equivalent in the Ontario code to the provision in the Canadian Human Rights Act that was the subject of my report. Section 13 in the Ontario code does prohibit the publication or display before the public of a notice, sign, symbol, emblem or other similar representation that indicates the intention of a person to infringe a right in the code or is intended by the person to incite the infringement of a right in the code. There are no recent cases and it's difficult to say very much about the provision.

Certainly there is every reason to ban the indication of an intent to discriminate in the form of a sign at a business that indicates that members of a particular group will not be served. The question, I suppose, is whether the second part of section 13, a representation that is intended to incite others to engage in discrimination, might be interpreted broadly so as to raise freedom-of-expression concerns. There are, as I say, very few cases

even in other jurisdictions dealing with this, and I'm not sure they can be of much help.

It is also, I think, important to note that the Ontario provision is limited in several ways. In contrast to some of the similar provisions in other provincial codes, the Ontario provision does not extend to publications, it includes an intention requirement and extends only to incitement to breach the act itself, and in that way can be seen as tying in with the general objectives of the code.

I will say that originally I had not actually intended to make an opening statement of sorts, and certainly not with the content that this one had until I realized that Mark Steyn was also to be speaking to you today. So another issue, it seems to me, has to do with the role of the commission in monitoring and commenting on patterns and instances of hateful or discriminatory speech in the province. The comments made by Barbara Hall regarding the Mark Steyn article were criticized by some. The commission decided that it did not have jurisdiction, but nevertheless observed that the article was discriminatory.

In my report I argued that the law—and my focus was on the federal act—should not prohibit expression that defames the members of an identifiable group, that we should instead consider other ways to respond to such speech. The Mark Steyn article, in my view, should not be censored, nor should it go unanswered. It was unfair and deceptive in its content and glib and sometimes juvenile in its style. How are the members of the Muslim community to respond to the suggestion in Canada's national newsmagazine that they are violent or sympathetic to violence? They do not have Mark Steyn's platform.

There may be a role for the commission to play in responding to defamatory, discriminatory speech in the community. Its mandate is to educate and advocate. As an institution, as it's currently designed, I am not sure how well suited the commission is to such a role. In my report I advocated a strengthening of the voluntary press council system, but I certainly would not want to rule out the possibility that the commission may also have a role to play. Those are my opening remarks.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin, then, with the official opposition. Ms. MacLeod.

Ms. Lisa MacLeod: Hi, Mr. Moon. How are you?

Mr. Richard Moon: Hello.

Ms. Lisa MacLeod: My name is Lisa MacLeod. I'm the Progressive Conservative MPP and am also the vice-chair of this committee. I'll be splitting my time with another Progressive Conservative, Christine Elliott, who is our Attorney General critic. I was the person who contacted you to call you in to discuss your report. It was very important and very timely. I didn't call you in, I guess, to make accusations and call people liars on this forum, and I was quite disappointed because, having read your biography and having read your report, I was expecting a very open discussion on hate speech and just ensuring that the Human Rights Tribunal in this province,

as you rightly point out, follows its mandate, which doesn't include regulating freedom of expression over the Internet or in magazines. The one thing I do find disappointing, having gone through this process and also bringing forward folks who sit on this tribunal, is asking that very important question—bluntly, how do we have a discussion about freedom of expression and freedom of the press in this province?

I came across something from another, like me, rabid, right-wing extremist, Rex Murphy, who wrote about the Mark Steyn issue. I'll quote two paragraphs from him:

"What I do not associate with this deep and noble concept is getting ticked off by something you read in a magazine—or for that matter hear on television—and then scampering off to a handful—well, three—of Canada's proliferate human rights commissions—seeking to score off the magazine: this is what four Osgoode Hall law students and graduates—a very definition of the 'marginalized'—under the banner of the Canadian Islamic Congress have done after reading an excerpt from Mark Steyn's *America Alone* in *Maclean's*. The complainants read the article as 'flagrantly Islamophobic.'

"*Maclean's* magazine? Well, we all know what a hotbed of radical bigotry and vile prejudice *Maclean's* magazine has been. Go away ... for what seems like a century *Maclean's* was no more 'offensive' (that is the cant term of choice these days) than a down comforter on a cold day and if Mark Steyn's article offended them: so what? Not every article in every magazine or newspaper is meant to be a valentine card addressed to every reader's self-esteem. *Maclean's* published a bushel of letters following the article's appearance: some praised it; others scorned it. That's freedom of speech; that's democracy; that's the messy business we call the exchange of ideas and opinions."

I may not be Rex Murphy and I may not be able to do his traditional rant, but when I read that, I realized that it's not just one side of the political spectrum or the other side that has a concern with the human rights system in Ontario. That is why, sir, we are having these hearings; not because we were pressured into it and not because we feel that one side of the spectrum or the other is being slighted.

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We are here to have an open discussion, one that we should be having here in the province of Ontario, to discuss freedom of expression, freedom of speech, but also the process, so that those people who actually are discriminated against are getting the services they need in a timely and efficient manner so that the process works for those people who need it most.

I'll allow you to respond, but the further questioning will be from my colleague Christine Elliott, who is our Attorney General critic. Thank you.

Mr. Richard Moon: Okay. Thank you. I think I do need to reply. I wrote what I hope is considered to be a serious report on the particular issue of how hate speech is dealt with by the Canadian Human Rights Act. In the

course of preparing that report, what I came across, of course, and what I held my tongue on and made only a brief allusion to in my report, was a number of, not serious arguments about the regulation of hate speech, but personal attacks directed at members of the commission. I mean accusations of corruption and so forth which, when investigated by the privacy commissioner, by the RCMP and so forth, have all been found to be groundless. There are more and they continue. It's a style of rhetoric that has distorted. I'm seeking initially to simply say, can we clear the decks of these personal accusations and can we have a serious conversation about how one regulates this so we may not be operating on different pages?

On the question of the Mark Steyn article and the complaints brought against it: The complaint was brought to the Canadian Human Rights Commission and, ultimately, it was determined that it should not proceed to the tribunal stage. It was not adjudicated. In my report I addressed some of the problems or issues with having the commission serve a filtering process when dealing with hate speech simply because it's a protracted process. It's required to be that because of the requirements of natural justice that the courts require. I think that raises, even if it's ultimately almost inevitable that a particular complaint will be dismissed by the commission and not proceed to adjudication, freedom-of-expression issues. That's one of the reasons I recommended that this issue be dealt with under the criminal law exclusively.

If one looks at the British Columbia process, I think it's worth noting—and certainly the individuals who sat on the tribunal and wrote the tribunal judgment in that case expressed some frustration that Maclean's did not take advantage of the procedural motion that could be taken in advance of the hearing in which they could request dismissal of the complaint on the grounds that it was unlikely to succeed following a hearing. Well, Maclean's decided not to do that. I don't know whether they would have been successful at that stage, but clearly they wanted a hearing; they embraced the hearing. I think it's worth noting and remembering that rather than saying, as many have, what an oppressive and horrible process it is. There are problems with any of these processes, but we ought not to inflate them.

So, yes, I think there's a serious debate to be had and I'm certainly not aiming to make personal attacks or challenges against anybody on this committee, but I want people to be aware that some of the general things that are floating around out there about human rights committees are baseless personal attacks.

The Chair (Mrs. Julia Munro): Thank you. Very brief time, Ms. Elliott.

Mrs. Christine Elliott: Okay. Good afternoon, Professor Moon. I have a question really relating to the structure of the new system—I was involved in the Bill 107 committee hearings, and there were several concerns expressed to us at that time—first of all with respect to the kinds of complaints that are being heard by the tribunal which are primarily individual complaints, fact-

based complaints, versus the commission's mandate to examine issues of systemic discrimination and bringing that before the tribunal. It was expressed at that point that there was a sort of disconnect there, and how would one really know what the other was doing so that the commission would be sufficiently informed about what sorts of things should be going before tribunal? Would you have any comment on that?

Mr. Richard Moon: First, I obviously have to confess that the focus of my report has been on the Canadian Human Rights Act and the system that operates here. I can't claim to have any particular expertise on the Ontario process and, certainly, as it has been reconstituted. Any knowledge or interest I have, I suppose, really stems from the possibility of discriminatory expression or representation and how those might be dealt with.

It does seem to me that inasmuch as the Ontario code deals with that—and it's not clear to what extent it really does deal with that, but section 13 does seem to me to be a provision that would be individualized, that the wrong we're speaking of is very much an individualized wrong; that is to say, an intent to discriminate, yes, against the members of a group, but presumably individuals who may feel they have been excluded as the consequence of a particular sign or indication will bring the complaint—that it may be different in its character from a straightforward prohibition on hateful speech. But given that there's just no case law, no judgments on this section, it's very difficult to know.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on to Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, Madam Chair. Cheri DiNovo here, Professor Moon, from the Ontario New Democratic Party.

Apparently, the Ontario Human Rights Commission did respond to your deputation. I'm just wondering if you could comment on their response. I'll just read a couple of lines—

Mr. Richard Moon: Yes; I've not seen it.

Ms. Cheri DiNovo: —for everyone else's information.

The right to freedom of expression comes with a responsibility to confront hate expression, they said. A human rights approach offers broad tools for confronting hate expression without trampling on freedom of expression, and state and non-state actors, including government, human rights commissions, other public sector institutions and the media have a responsibility to address issues of hate expression.

What do you think about their response to what you've written?

Mr. Richard Moon: I guess I could really only reiterate what I wrote originally. I think that any kind of regulation of speech ultimately needs to be confined to a fairly narrow category, that there are too many risks and costs to trying to regulate any broader category of defamatory speech or speech that stereotypes. I think that even if we frame it as being a kind of conciliatory process etc., ultimately, it engages serious freedom-of-

expression values or concerns. I actually think that, in the end, out of a commitment to freedom of expression, we need to focus on the most extreme forms of expression. It's not even a practical option to talk about trying to eradicate, through censorship, stereotyping or group defamation.

If we're going to focus through law on censoring, on regulating or restricting—however we'd frame it—these most extreme forms of expression, well, they are extreme in character, and I'm not sure that conciliation is actually the ideal model to respond to this.

If you look at the cases that have been recommended, that have moved from the Canadian Human Rights Commission to the tribunal stage, at which the tribunal has almost invariably found a breach of section 13, we're talking about seriously extreme expression in which you see individuals, in effect, calling for violence against the members of an identifiable group. It seems to me that that's what we should be focusing on. That is not the kind of stuff that we deal with effectively through, I suppose, the kind of conciliatory process of human rights commissions.

Ms. Cheri DiNovo: In a sense, you are right in saying that your comments, however interesting to us, are outside of the realm of what this committee is looking at with the implementation of Bill 107 and the Human Rights Tribunal and what happens there. Our concern, as a party, with a human rights tribunal is the access. Apparently, only 40% of complainants have legal counsel, and certainly the kind of counsel one would expect to carry them through the entire process. We're also finding that there's not enough staff or funding to really investigate some of the issues, clearly.

Our problems with the Human Rights Tribunal are more its effectiveness in terms of promoting and defending human rights on the individual basis here—and of course, ultimately, systemically, I suppose—than anything else.

Have you looked at Bill 107, and did you have any comment?

Mr. Richard Moon: Unless you're contemplating including a more robust restriction on discriminatory speech or unless section 13 of the current code has some new life breathed into it, you're right: I'm not sure that I'm the most useful person for you to speak to.

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Ms. Cheri DiNovo: Fair enough; thank you very much.

The Chair (Mrs. Julia Munro): Thank you very much, and we'll go to Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Madam Chair, and hello, Professor Moon. My name's Lorenzo Berardinetti, for the Ontario Liberal Party, and I'm also a Windsor law school alumnus; many years ago. So it's a pleasure to hear from you today.

Mr. Richard Moon: Before my time, I'm hoping.

Mr. Lorenzo Berardinetti: Yes, yes. Back in the 1980s.

I had just a couple of quick questions for you. I just wanted to ask if you ever had any occasion yourself to

appear at the Human Rights Tribunal or interact directly with the Human Rights Tribunal as opposed to the Human Rights Commission.

Mr. Richard Moon: I have not—either the commission or the tribunal.

Mr. Lorenzo Berardinetti: Okay. In the study that you prepared—I have to confess that there's so much paper in front of us, I haven't had a chance to read all of it—it seems that it deals primarily with hate speech and not discrimination claims in general.

Mr. Richard Moon: No, I was directed specifically to discuss section 13, which deals with what we could roughly describe as hate speech.

Mr. Lorenzo Berardinetti: Would you see that, then, as being the reason—you're saying section 13—

Mr. Richard Moon: Section 13 of the Canadian Human Rights Act.

Mr. Lorenzo Berardinetti: The Canadian Human Rights Act.

Mr. Richard Moon: Yes, not to confuse it with the code section.

Mr. Lorenzo Berardinetti: Okay. I'm just trying to see how we can put that into what we're looking at today, which is basically the tribunal, and if you would have any recommendations as to how the tribunal could better function.

Mr. Richard Moon: Again, I don't claim any sort of expertise in dealing with the more familiar forms of direct and effects discrimination in the context of employment, services and so forth. Any legal academic is capable of having opinions about everything and anything, but I think it would be presumptuous of me to suggest I had any useful opinions on this for you.

Mr. Lorenzo Berardinetti: Those are all my questions. Thank you.

The Chair (Mrs. Julia Munro): All right, thank you very much. This concludes the presentation. Thank you very much, Professor Moon, for joining us.

Mr. Richard Moon: Thanks again for accommodating me.

ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT ALLIANCE

The Chair (Mrs. Julia Munro): Our next presenter, the Accessibility for Ontarians with Disabilities Act Alliance, and David Lepofsky, the human rights reform representative.

Good afternoon, Mr. Lepofsky. As you will know from the earlier deputations, we have 30 minutes set aside. You will have the opportunity to make comments in that time and whatever remains will be divided among the caucuses. So please begin when you're ready.

Mr. Orville Endicott: Good afternoon, members. My name is Orville Endicott and it falls to me to introduce to you our main presenter this afternoon, David Lepofsky, and also our other colleague Lesley MacDonald. If I may just say a word about myself first, I am not part of the leadership of the AODA Alliance but I am one of the

architects of it, and when I say a few words about Mr. Lepofsky you will get a sense of the history of how the AODA Alliance came into being.

My other colleague is Lesley MacDonald, who is the national coordinator of accessible design services for the Canadian National Institute for the Blind. She has, with the blessing of CNIB, made her skills available to the AODA Alliance for its work.

Now, David Lepofsky, who is going to be presenting to you today, is a graduate with honours from Osgoode Hall Law School and went on to do a Master of Laws at Harvard Law School in the early 1980s. Even before that, he was very active in a volunteer capacity and continues, to this day, to be a volunteer advocating for reforms to the law that will secure better rights for people with disabilities. He was one of the most articulate and persuasive voices that gave us, in the Canadian Charter of Rights and Freedoms, the guarantee of equality for persons with disabilities. He had the same impact here in this province with respect to the inclusion of protections against discrimination on the grounds of disability in the Ontario Human Rights Code.

If I were questioning him I might ask him how long it is going to take him to get Canada to ratify the United Nations Convention on the Rights of Persons with Disabilities, which was passed at the UN and signed by Canada more than two years ago.

Beginning in the mid-1990s, David was the organizer and the driving force in the Ontarians with Disabilities Act Committee. That committee achieved, through the Conservative government in the 1990s, the Ontarians with Disabilities Act, 2001. Then, of course, he went on to ensure that we have the Accessibility for Ontarians with Disabilities Act, the AODA, passed in 2005.

Whenever I ride on the Toronto Transit Commission's subways or buses, I can't help thinking of David because I take advantage, just like people with visual impairments do, of the very clear and timely announcement of every stop. It's a very dulcet and clear voice that I hear, but it's really David Lepofsky's voice, which you will hear in just a minute.

I left out that we would not be hearing that voice had David not successfully gone to the Human Rights Tribunal of Ontario, first to ensure that the TTC would announce subway stops and then a little while later that they would announce all bus and streetcar stops.

David received the Order of Canada in 1995, the Order of Ontario in 2007, and too many honours for me to list. He is a prolific author, both of published and unpublished documents, one of which you have before you today. He is the human rights reform representative for the AODA Alliance.

David.

Mr. David Lepofsky: Thank you, Orville.

It's an honour to be able to appear before you. You have a brief before you that we've submitted. I know that this hearing is being televised. If anybody else wants to get a copy of our brief, we'd be delighted to e-mail it to

them. They need simply send a request to aodafeed-back@rogers.com.

We're honoured to be here particularly because we wanted to make these points about two and a half years ago at standing committee hearings on Bill 107, which we were promised, which the government scheduled, which the government advertised and which the government, over the commendable opposition of the opposition, cancelled through an unprecedented closure motion to muzzle public debate on human rights reform. I regret that what we are here to do today is to tell you what we were trying to warn you of three years ago and unfortunately appears to be coming true as a result of the government's changes to the Human Rights Tribunal and the related agencies it works with.

The coalition which I have the privilege of serving is made up of individuals and organizations, like Orville and Lesley, who, some 30 years ago came to this building to fight to get discrimination because of disability into the Human Rights Code. We were delighted to win two rights back in 1982. First was a legal ban on discrimination in the workplace and access to goods and services, housing and the like, based on disability. But that wasn't the only right we won. The second right we won was a legal guarantee that our human rights would be publicly investigated and publicly prosecuted by a public law enforcement agency called the Human Rights Tribunal. As long as the complaint was within their jurisdiction, not trivial and incapable of being settled, their job was to investigate it and, where appropriate, to litigate it. Those were two important rights that we won. In the 1990s, we united as a disability community to fight for and win the Accessibility for Ontarians with Disabilities Act, a new law to build on, not replace, the Human Rights Code.

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We're here today to draw your attention to the promises that the government made in 2006 when it decided to pass Bill 107 to privatize the enforcement of human rights, and to demonstrate through the government's own data by those responsible for implementing this law that those promises have, sadly, not been kept.

In 2006, the government, over the commendable opposition of both opposition parties, opted to repeal the right that we won to have our human rights claims publicly investigated and, where warranted, publicly prosecuted by the Human Rights Commission. The government decided to privatize it: to put the job of investigating and litigating our human rights on the backs of discrimination victims themselves, a population that the government always recognized is vulnerable, disadvantaged, often impoverished and least able to take on that privatized duty on their own.

What did the government promise it would do? By privatizing the human rights enforcement process, by telling us that we have to take our cases right to the Human Rights Tribunal, investigate them ourselves and try to get the support of the Human Rights Legal Support Centre, if they choose to represent a claimant, the

government said that they would clear the backlog, which we all agreed was too long and too big, at the Human Rights Commission. The government said that this legislation would create new access to the Human Rights Tribunal; that any discrimination claimant would have the right to a hearing. Indeed, we were told about a hearing within a year of filing a complaint. We were told that the hearings would become more accessible and more fair, and we were told that, as a vanguard to support this, the government was not abolishing the role of the Human Rights Commission; we were told it was going to be strengthened and it would be in the vanguard of litigating human rights cases on a systemic or public interest basis. That's what we were told by the government, and if you look at appendix 1 to our brief, we provide quotations from the record to prove all of that.

So what has happened? This is from data that we requested from the Human Rights Commission, the Human Rights Legal Support Centre and the Human Rights Tribunal. Appendix 2 to our brief sets out the information requests. To the extent that we weren't able to get everything we wanted because of time limitations or they don't collect the data, we urge you to ask them for this same data that we weren't able to get.

What did we learn? First, what we have learned is that a very substantial proportion of the people who used to come forward to approach the human rights system appear not to come forward and approach the human rights system at all. According to the annual reports of the Human Rights Commission before its main functions were eviscerated, it would receive, in the mid-2000s, in the range of 50,000 to 65,000 calls per year. That's first contact, and if somebody doesn't make first contact, they're not going to go any further.

What have we learned under the new system? We understand that the intake role, the first-contact role, has been transferred to the Human Rights Legal Support Centre. The data that they've provided to us is that in their first six months, they've gotten approximately 10,000 calls. It sounds like a lot of calls, but it's actually less than half that would have come in in the same time period under the old system. Unless somebody can show that those people are otherwise engaging the system, that suggests to us that a substantial proportion, more than half of the people who might have come forward, may not be coming forward at all, even to make first contact. That alone ought to cause serious concern for everybody.

But that's not all. What has happened to the people who have come forward? We were told that the government would clear the backlog. The data that we've got on the caseload before the Human Rights Tribunal suggests that the backlog is as big as ever. The numbers we've been given—you heard some this morning, and they're in our brief—are that the new applications still not settled number about 1,000. The number of cases that jumped from the old system between June and December still not settled—some of them have been; I'm talking about the unsettled ones—is another 800. There's 1,800. We were also told that there are another 700-and-some

that the Human Rights Commission has before the tribunal under the old system, but a number of them are class action, so we boiled that down to 400 to be cautious in our numbers. That's 2,200 cases. If you file a complaint tomorrow, you join a lineup behind 2,200 other cases.

That backlog is not lower than it was if you take into account the following: There are, from what the Human Rights Commission has told us, another 2,000 cases that were at the commission in December of last year, not resolved, and the commission has had all of its residual powers to deal with them taken away. So they've got the right to jump into the new system. Those are cases which, if they do jump in, mean that you would be in line, if you come forward with a new case, behind 4,200 cases.

If you look at the statistics of the Human Rights Commission backlog that was the subject of a massive government critique, and properly so, when Bill 107 was brought forward, and the number of cases that were at the tribunal, and you combine them together, you won't see that there is progress. If anything, we've got a matter of concern.

Can they clear the backlog? You'll say this is early. They've got 22 full-time adjudicators at the tribunal and 22 part-timers, and I wasn't able to get figures on how many full-time-equivalents they are. If those 22 full-timers work every day, every night, don't go to the bathroom, don't eat and don't sleep, I don't believe that they can deliver a hearing to every complainant within the year that we were told to expect under this new system.

The government might say, "Oh, but it's a transition period"—not a fair answer. It's not a fair answer because we warned the government, and wanted to warn the Legislature, but of course we were muzzled by a closure motion, that their transition provision was going to do exactly what's happening. Moreover, the government gave itself 18 months after it passed Bill 107 to try to fix this problem and proudly announced last April that they were giving unprecedented money to fix it. So if they gave themselves the time they decided to give, gave themselves the money they thought was unprecedented, and still couldn't fix it, they can't turn around and say, "Ah, but it's a transition period." A new claimant is going to get into a longer backlog than ever. This is a serious, serious problem.

If that alone was the problem, that would be bad enough. It gets worse. The government promised us hearings that would be more accessible. This morning you heard Mr. Gottheil, the chair of the tribunal, talk about the new rules they've adopted. We reviewed those new rules, offered detailed proposals about them, expressed serious concern, and, I regret, were mostly disregarded, or our views were rejected when the tribunal set up its new rules.

Given the rules that the tribunal has adopted, a discrimination claimant would be foolhardy to try taking on the Human Rights Tribunal process without a lawyer.

The rules number 28 pages, I believe. They have fully 24 forms, any number of which you may have to fill out. There are detailed procedures; they are complex and they serve as a trap for the unrepresented. I'm not saying they were meant as a trap, but anyone who goes before that tribunal unrepresented goes forward at their own peril. They need to have legal representation, we believe. We warned the tribunal, and all the plain language in the world in their rules or their forms doesn't remove that need.

Given that, what is the situation? What is the reality before the tribunal?

The government promised us that there would be free, independent legal representation for all discrimination claimants. The quotations documenting that are in appendix 1 to our brief. Have they delivered it? Again, don't ask us; ask the tribunal. The data they gave us was that only 40% of new claimants came to them with legal counsel. The figure I believe they gave this morning may have been as low as 20%, but let's assume it's 40%. Let's give them the benefit of the doubt. That means 60% of new claimants are unrepresented. That's a far cry from everyone being represented when taking on rules which one needs legal training to navigate and to avoid risk in the presentation of your case.

Now remember, under the old system this wasn't as much of an issue because the case didn't go to the tribunal unless the Human Rights Commission had investigated it, tried to settle it and assigned counsel who was supposed to have carriage of it before the tribunal. Under the new system, you're on your own, and that is a serious problem under the new system.

I just talked about how many people are unrepresented among the claimants who bring new claims. What about the 900 or so people who were in the old system last June and decided to jump to the new system this fall? According to the website of the Human Rights Legal Support Centre I quoted in our brief, they opted as a matter of policy not to represent any of them. That's none of them. That's their policy. I don't know if they departed from it, but all we know is that that's their policy. That's a far cry from full legal representation for all claimants.

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We have a very serious, troubling system. The question came up this morning, and we commend those members who raised it: What about the respondent? Is the respondent, the party accused of discrimination, represented?

Let me talk personally for a moment. As Mr. Endicott indicated, I brought two cases against the TTC, one to get them to announce subway stops and one to get them to announce all bus stops so that we blind people, and, by the way, you sighted people, can know where the heck we are—an outrageous human rights claim, of course. One would have thought it so obvious that they would have done it, but they didn't. Instead, under the old system, the TTC went and hired lawyers. Between the two cases that I fought against them—and freedom-of-

information requests that I brought and documented—the Toronto Transit spent a grand total, between the two cases, of 450,000 taxpayer dollars on lawyers to oppose calling out all bus and subway stops reliably for the benefit of blind passengers.

I'm not saying that every respondent is going to spend that kind of money, but many of the biggest ones can, and it is not a fair fight for an unrepresented, disadvantaged discrimination claimant, who may have lost their job for trying to get access to a basic government service, to be up against the muscle that can be marshalled against them when many respondents are legally represented and the complainant may not be.

You asked the tribunal this morning, in how many cases is the complainant unrepresented but the respondent isn't? They told you they don't have that data. We asked that same question. With respect, they should have that data. The issue of proper legal representation was a central concern during the much-focused-upon and much-covered public debates over Bill 107. Even the proponents of Bill 107—those who were on the other side of the debate from our coalition and others who support us—many of them, from the community groups, agreed how important it is not to throw in an unrepresented complainant against a represented respondent.

Time is short. Let me jump to some other considerations. Again, if all of that was the only thing that's gone wrong, it would be bad enough, but I regret that it gets worse.

When the government brought forward Bill 107, the government and its proponents said that one of the big problems with the old system was that there was a gatekeeper at the gate of the Human Rights Tribunal of Ontario. It was the Human Rights Commission that would decide which cases went forward, and they repeatedly talked about how few cases actually go to a hearing. They said the new system would have no gatekeeper.

We believe that the data before you will show that they've just changed gatekeepers. There's a new gatekeeper; it's called the Human Rights Legal Support Centre. They get 10,000 calls in six months. They do, I am sure, the very best they can; they are dedicated and hard-working people. They interview, I believe, a proportion of the people who call them, they have advised a smaller proportion, and they have ultimately drafted complaints or applications for, we've been told, about 200 or so applicants and another couple hundred more coming—a very small fraction of the 10,000. That is de facto a gatekeeper role.

Again, if that wasn't bad enough, we'd have a lot to be worried about, but it gets worse. We were told that the Human Rights Tribunal would adopt proceedings that would be fair. The Human Rights Tribunal, over our objection and those of many other community groups, opted to use the power that the government gave it to override the requirements of fairness in the Statutory Powers Procedure Act. Mr. Gottheil this morning made it sound like we're trying to come up with old technical criminal law proceedings at the tribunal—far from the

truth. With respect, it's just not our position. We want some basic fairness.

We quote in our brief one ruling that should give members of this committee concern. I don't want to talk about the merits of the case; I don't know anything about the merits of the case. But in a case called Persaud, one tribunal adjudicator, a Mr. Mark Hart, decided, before a hearing began, to dictate to the parties how long they could examine in chief or cross-examine each of the witnesses listed—an hour for this one in chief, an hour in cross, a half-hour here in chief, a half-hour in cross—and he said, "If you've used up your time, or if you're not happy with this, I'll consider an extension, but you've got to first identify, or prove to me, that you used your time effectively."

With respect—and I'm not commenting on the merits of the particular case there—this is exactly the kind of potentially unfair proceeding about which we are very concerned. It is impossible in advance to have an adjudicator who does not know the witness, hasn't interviewed the witness and doesn't know all of the ins and outs of the case to know better than counsel calling the witness how long they need to examine them or cross-examine them. The tribunal gave the same time for chief and for cross. It's not unusual in cases for a witness to be very short in chief, very long in cross, or the other way around.

Finally, the tribunal, deciding that they would give people the opportunity to ask for an extension after or near the end of their time—after they've already used it up—puts counsel in a hopeless position. You have to know how much time you have before, not after you've used it.

I know my time's just about up, but I just want to talk about my last area of concern. A hugely important issue—by the way, I can't say how prevalent that practice is; I'm just simply advising that that is a decision which is an indication of an area of concern which merits, I believe, more attention by this committee into the powers the tribunal is using.

Final area of concern: public interest remedies. It's not enough when somebody is discriminated against, if they prove their case, to give them some money and say, "Go away." If that happens, the claimant may be happy to get some money and go away, but that doesn't prevent it from ever happening again. That's why we need public interest remedies. The party that was in the lead of seeking public interest remedies under the old system was the Human Rights Commission. Of course, they're ahead of the game for most of these. We are very concerned. We wrote the tribunal and asked how many cases they're giving public interest remedies in settlements and we haven't gotten any answers on that yet. We hope they're able to pull that information together.

But of course, there are six reasons that I'm going to summarize, then I'll conclude, why you should be very concerned about this under Bill 107.

First, the government said that under Bill 107, the Human Rights Commission, even though it was out of

the business of dealing with individual cases, would be in the vanguard of bringing public interest cases. Guess how many they've brought under Bill 107? Zero. That's their number, not mine. Under the old system, they've got one still outstanding. They've done one inquiry so far, but they've brought zero commission-initiated complaints so far. That's one of my six.

Number two, the government said that the Human Rights Commission could intervene in individual cases. This was an avenue, for example, to bring forward public interest concerns. How many of the 1,200 new applications have they intervened in under the new system? According to the Human Rights Commission, one. Well, that's one more than zero.

The government told us that the commission would retain investigative powers, but look at schedules or appendices 4 and 5 appended to my brief. They've laid off all their investigators. How can they investigate without investigators?

Fourth, the government said that the Human Rights Commission would be empowered to do this through two new secretariats that Bill 107 requires them to establish, the anti-racism secretariat and the disability rights secretariat. You go down to the Human Rights Commission—you can go all through the building and look for them—they don't exist, contrary to the requirements of the Human Rights Code.

Finally—I only have time for five—the government said that we could be confident that disability would be a priority among the commission's work. You'll see that while they have done some important work in disability, and I'm sure they'll do some more, their priorities set out in their strategic plan, which we quote, set mental health as one of their priorities but no other disability issues—a bunch of others. We're very concerned that we're going to fall, potentially, to the lower end of the priority spectrum.

Let me conclude by thanking you again for giving us the opportunity. I wish we would have been able to do this three years ago. We welcome the chance to come back to talk more about this as you get more data. We encourage you to have full hearings and invite not just those of us who are here today but anyone else of the hundreds of groups who were frozen out.

Finally, we encourage you, on all sides of the House, to unite to have the government keep the promises that it said it would under Bill 107. Thank you very much.

The Chair (Mrs. Julia Munro): Thank you very much. You did mention that you had six and that you went to five. We are certainly here to hear number six if you want to add that.

Mr. David Lepofsky: Okay. That's fine. I just wanted to make sure I didn't go over my time.

The Chair (Mrs. Julia Munro): No, no. Go ahead.

Mr. David Lepofsky: All right. The sixth concern is this—this is really fundamental to us. Remember I said that the disability act that we fought for and proudly won in 2005—the underpinning of it was the Human Rights Code. We're very proud that the government brought it in and we're very proud that both opposition parties

united to support it. That was an incredible day back in 2005, when it was passed.

Let me talk about what happened leading up to that bill. One of the things that Premier McGuinty promised our coalition in the 2003 election was that that disability act would have effective enforcement. When Premier McGuinty got elected, his government asked us what effective enforcement we wanted. We said we would like a new enforcement agency to enforce the accessibility requirements, independent of the government. We had a long discussion with the government and the government ultimately elected not to give us that new enforcement agency. I was the lead negotiator for our side of the table. They were very good negotiations and in good faith we were told, I believe, that the government believed that we would have enough to be able to continue to use the investigative and prosecutorial functions of the Ontario Human Rights Commission. We didn't get everything we wanted in that bill, but we shook hands and celebrated its passage as an overall good deal.

A year later, the government turned around and ripped out the Human Rights Commission's investigative teeth and its enforcement teeth. In other words, the very enforcement agency that we were supposed to be able to

fall back on was essentially eviscerated. That, we say, is not fair. It undermines the Human Rights Code, but it also undermines the disability act for which all three parties so properly and wisely united to pass. That is a breach of faith; it is a breach of commitment; it is fundamentally unfair. It is also something that we wanted to be able to say to a committee of the Legislature three years ago, only a closure motion precluded us from being able to say it in here. We had to do it at press conferences or in letters to the editor.

The Chair (Mrs. Julia Munro): Thank you very, very much. We appreciate your being here today. As you might have realized, we have exhausted the time that is available, but I'm very pleased that we were able to offer you the opportunity to make your final comment. Thank you very much for being with us today.

Mr. David Lepofsky: Thank you very much.

The Chair (Mrs. Julia Munro): Ladies and gentlemen, that concludes the business for today. The committee stands adjourned until you have the closed session at 9, the open session at 9:30 tomorrow.

The committee adjourned at 1553.

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Agency review:

Ontario Racing Commission

Comité permanent des organismes gouvernementaux

Examen des organismes
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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 10 February 2009

Mardi 10 février 2009

The committee met at 0931 in room 151, following a closed session.

AGENCY REVIEW

ONTARIO RACING COMMISSION

The Chair (Mrs. Julia Munro): Good morning, ladies and gentlemen. Welcome to the Standing Committee on Government Agencies. This morning we are going to conduct ourselves with regard to a review of the Ontario Racing Commission, and I see we have the chair, Mr. Rod Seiling. Good morning. Welcome to the committee. For the purposes of Hansard, I'd ask you to introduce those who are with you.

Mr. Rod Seiling: Madam Chair, as you identified, I'm Rod Seiling, chair of the commission. With me I have John Blakney, executive director, and Steve Lehman, our chief administration officer.

The Chair (Mrs. Julia Munro): I would just explain to everyone that you have the opportunity to make an opening statement. After that, we will then rotate amongst the caucus for questions and comments.

Mr. Rod Seiling: Thank you, and I do wish to make an opening statement. Good morning, Madam Chair and committee members.

As you will know, the Ontario Racing Commission's authority flows from the Ontario Racing Commission Act. We are a self-funding agency, meaning none of our operating funds come from the government. The commission is mandated to govern, direct, control and regulate horse racing in the province. The commission consists of seven members, including myself, and all of us are appointed by the Lieutenant Governor in Council.

An ongoing challenge for the racing industry, and therefore the commission, is its difficulty in understanding the roles and responsibilities of the commission that flow from the act. Adding to this difficulty is the division of responsibilities within the commission, specifically between the governing board and the administration. It is not unusual for me to receive telephone calls or communications wherein the person wants to discuss a specific matter. The standard response is that I can and will converse on a matter generally, but cannot talk specifically without the risk of prejudicing myself. After I explain the reasons, I often then refer the matter to the executive director.

I do this because in effect we function in two specific modes. First, as a governing board, we are responsible for setting policy and direction for the horse racing industry in Ontario. Second, we also act as a quasi-judicial body, hearing the appeals of licensees that arise from decisions made by racing officials employed by the commission. These decisions of the panel of the commission are subject to an appeal by an appellate court, just as all decisions made by the commission's officials can be appealed to the governing board. It is all part and parcel of our due process that is available to every licensee. On an annual basis, the commission's judges, stewards and officials make thousands of rulings annually in the course of their work. On average, only 60 to 70 of these rulings are appealed to the commission.

We are an atypical regulator as we administer, on behalf of the province of Ontario, the HIP, or horse improvement programs, more commonly referred to as the Ontario Sires Stakes, and we make economic decisions primarily related to the allocation of race dates.

Horse racing in Ontario is a large and complex industry. The industry is comprised of racetracks and horse people; that includes owners, trainers, grooms, jockeys, drivers and horse breeders. The commission has approximately 28,000 licensees, and all of them undergo background checks prior to being issued a licence. The background investigations are conducted by commission investigators or Ontario Provincial Police staff seconded to the commission.

The commission became the administrator of the HIP programs by default. They had been handed off to the industry to administer some years ago, but as they were unable to perform this function, the industry made a joint request for the commission to reassume control. This was not surprising, given the varying and sometimes conflicting self-interests and subgroups within the racing industry. Each has its own constituency and its own agenda, which sometimes are in conflict. Theoretically, they are partners with a common business interest. Unfortunately that is not the reality, with the commission left to try and facilitate agreement and, failing that, to arbitrate, and sometimes through a formal hearing process.

The industry traditionally experienced tension between tracks and horse people, no more or less than one would expect to see in a typical labour relations scenario. That relationship has escalated dramatically since the slots-at-racetracks program was initiated some 10 years

ago. The primary cause revolves around the horse people's associations' and the racetracks' disagreements over the number of days of live racing. At the heart of the issue is that the two sides are operating on different business models. Horse people naturally want more racing. The tracks approach the matter, they claim, from more of a business perspective, matching customer demand with operating costs. Revenue split is not at the heart of the tension as it once was, pre-slots, but the issue now is mistrust. However, we are hopeful that that will soon change. There has been a very recent shift in the leadership of the major standardbred association, and we look to signs of improvement in the near future.

This commission supports the principles of the Slots at Racetrack program to support live racing and enhance the rural economy. Our record clearly indicates that we walk that talk. However, it is easy to see that from the horse people's perspective, they see the slots agreement as a possible opportunity for tracks to increase profits by focusing more on the slot partnership than on the partnership with horse people.

We continue to try and have the partners work together, and have started to identify benchmarks that the industry can then utilize in determining measurements of their respective businesses. For example, in a recent decision, a panel of the commission directed the administration to work with the partners to identify an agreed measuring formula for horse supply, an issue of continuing discord. A copy of the reasons for that case has been provided to you. We have also invited them to meet with the commission, who will act as a facilitator to try and find some common ground as to the business model.

The day-to-day administrative affairs of the commission are the responsibility of the executive director. He leads a team of approximately 90 people who officiate at the races at 18 racetracks all across the province. These tracks represent all three breeds of racing: quarter horse, standardbred and thoroughbred.

The Chair (Mrs. Julia Munro): I'm sorry. I just must remind you that you're running out of time. Could you make your final comments?

Mr. Rod Seiling: I thought that I had a little more time.

The Chair (Mrs. Julia Munro): Okay.

Mr. Peter Kormos: Excuse me. We're here from 9:30 until noon?

The Chair (Mrs. Julia Munro): Yes.

Mr. Peter Kormos: Okay.

Ms. Lisa MacLeod: I'm fine.

Mr. Peter Kormos: I'm eager to hear about—

Mr. Tim Hudak: Are you on the stretch, at least, Rod?

Mr. Rod Seiling: I'm past the halfway mark. Thank you.

Ontario has the most number of racetracks in North America. These tracks conduct over 18,000 races annually, making Ontario the largest racing jurisdiction in North America. We consult on virtually all our program

and regulatory initiatives. I must say that sometimes, some in the industry mistake consultation for consensus.

0940

The objectives of the sires stakes programs are to improve the breeds and to enhance the rural economy. To that extent, the programs by any measure are successful. Ontario horses can and do compete with the best. For example, please refer to the Toronto Star article included in your information package. Ontario's Somebeachsome-where became the world's fastest standardbred this past year, winning races all across North America. Mr. Perkins said it better than I could. This amazing horse was even a recent Lou Marsh Award nominee. The investment in farm land, buildings, livestock and so forth speaks volumes for the success of the program.

The commission operates on three guiding principles: the protection of the health and welfare of the horse, the protection of the safety of participants and the protection of the public interest. The commission operates on a budget of \$11 million annually, including the costs of administering the programs. I am pleased to report that we pride ourselves on being efficient and effective. Two years ago, we were able to reduce our budget by \$2 million and still improve service. We accomplished this feat even though 80% of our costs were out of our control, and that fact is bringing to bear real cost pressures.

We are mandated to provide services to the industry to officiate the running of the races, and these services require people. As well, an important part of our due process is the right to have a hearing, and these costs are beyond our control too. Notwithstanding these budget realities, I am also pleased to say that we are recognized as best in class across North America in terms of the quality of our performance as a regulator. These are not just our words. May I quote from a September 2008 edition of the Daily Racing Form, the leading international horse racing publication, and I quote: "Change is coming" and it starts, "as do many racing innovations, in Ontario."

Wagering in Ontario has remained constant over the years, at about \$1.2 billion. You will note those numbers in the chart provided to you in the information package. What has changed is the mix of that wagering. The number of live race dates has increased over 10% since the inception of the slot program, going from 1,457 in 1998 to 1,634 in 2007. This takes into account that one track and its 25 live race days—Quinte Raceway in Belleville—is closed and is expected to reopen in 2010 with a brand new facility.

When one examines the expanded gaming opportunities and the expansion of competing entertainment options, including those at home, along with the vast explosion of technology, I suggest that racing has fared quite well in many respects. That is not to say it does not have its challenges, and our border tracks are just one example of those.

Despite its warts and the like, I suggest to you that one of the reasons for that success has been and remains the contributions of a regulator that is fair, competent, transparent and professional. We will never be loved by those

whom we regulate, and from time to time they will complain. I can assure you that the basis of any of those complaints will not be from denied due process, fairness or the opportunity to be heard.

Thank you very much. We look forward to answering your questions. Just for the record, due to privacy legislation, we will not be able to provide you with any financial information on the individual racetracks, though.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin questions and comments from the official opposition. Ms. MacLeod.

Ms. Lisa MacLeod: Welcome to our friends from the Ontario Racing Commission.

Mr. Seiling, I have a few questions for you. Some are very specific. I'd like to start off with your dual mandate. I just want to quote you in your statement.

You said first that you have "two specific modes. First, as a governing board, we are responsible for setting policy and direction for the horse racing industry in Ontario. Second, we also act as a quasi-judicial body, hearing the appeals of licensees that arise from decisions made by racing officials employed by the commission." I'm just wondering, given the dual mandate of the ORC of policy development and implementation, as well as acting as a regulator, as a quasi-judicial body, do you find that there is a conflict of interest in the ORC's mandate that needs to be dealt with through the appropriate act?

Mr. Rod Seiling: I would say that we fully recognize the possibility of conflict and we go to great lengths to ensure we don't have conflicts. We have specific conflict-of-interest guidelines that we adhere to very stringently. In fact, we are recognized as going far beyond what the government requires. I'll turn it over to our executive director, Mr. Blakney, to speak directly about those conflict-of-interest guidelines.

Mr. John Blakney: Since 2000, when the Ontario Racing Commission became self-funding and the Racing Commission Act came into force, the issue of conflict of interest was a major one with respect to the operations of the racing commission with respect to its dual mandate.

Ms. Lisa MacLeod: Do you think it's possible that you could table the conflict-of-interest guidelines with the clerk, so that when we move on to—

Mr. John Blakney: I think they've been included.

Ms. Lisa MacLeod: They have been included?

Mr. John Blakney: Yes.

Ms. Lisa MacLeod: Okay. I think that's important.

One of the things I regret on this committee is that we can't open the doors to every deputant who wants to speak, so we do have to accept written submissions, because people who want to comment can't come. They haven't been invited. I want to read three of those into the record today.

One is from Eric Poteck, who is from Toronto. He is a horse race player advocate. He says: "The ORC currently wears many hats, but the most important one is not fitting properly. The commission needs to get back on track to its core purpose of regulation and enforcement of the

rules of the game, and let the industry stakeholders run the industry."

We also have another disappointed stakeholder with the Horsemen's Benevolent and Protective Association. Sue Leslie, the president of that organization, writes: "We believe the ORC has travelled down a path that is outside its intended mandate. This path results in wasted resources in terms of both time and money. The role of the regulator needs to be more specifically defined and articulated to all stakeholders."

Finally, I want to read a letter, just an excerpt, from a 78-year-old horseman who wrote to me yesterday. His name is Mervin Bud Burke. He's also from the greater Toronto area. He talks about his time as a horse racer, and he says: "The ORC is a large organization and needs experienced management that can draft a long-range business plan, draft a dress code, a code of conduct and a clear understanding of integrity. Set up a professional enforcement team with the power and support to carry out their mandate."

I know that this afternoon we're going to have the OHHA and several other stakeholders who will probably provide us with similar views, that the mandate of the ORC is essentially a contradiction and there is a conflict of interest. I would like you just to talk a little bit more about how your organization makes decisions and what factors the ORC considers when deciding race days.

Mr. Rod Seiling: Before I turn it over to Mr. Blakney to talk about the race day allocation process, let me first address the generality of your earlier comments. I think it goes to the heart of my earlier comments about people not understanding the roles and functions of the commission. It's very clear we have two distinct functions; we talk about it, we talk to people about it, and they still seem to have some difficulty. They also do not understand the difference between the commission itself, myself and my six fellow board members, and the role of the administration. We really do have a Chinese wall there. So we go to great lengths to ensure, for example, on matters that deal with due process that we bend over backwards to make sure that neither myself nor any of my board members—

Ms. Lisa MacLeod: But surely there must be a great disconnect or a lack of communication between the ORC and the industry if I've just read into the record concerns from three stakeholders. We will hear from another four stakeholders this afternoon. I must say, having learned a little bit about this industry in the last year and a half, that you have a dual mandate in terms of policy development and policy implementation, as well as regulator, as a quasi-judicial body, it has been of great concern to the industry. I think that needs to be addressed. I think that if you're saying—

Mr. Rod Seiling: Can I finish my answer?

Ms. Lisa MacLeod: —that everyone doesn't understand, and I suspect that you mean also myself, I'm just pointing out as a legislator that that is of grave concern to many in the industry.

Mr. Rod Seiling: If you let me finish the answer I think I can help you.

Partly, it's a misunderstanding of or not an understanding of the roles.

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I spoke earlier about regulators not necessarily being loved by those they regulate. In fact, what happens many times when they have disputes is that they come to the commission for the commission to resolve that dispute. Depending on which way the commission—whether it be the administration dealing with it or the governing board, they like you or don't like you, and that like or dislike changes from issue to issue and from day to day. So it's not a surprise. Regulators are there to enforce the rules of racing as they're promulgated.

As I said earlier, we operate on three guiding principles: to protect the health and welfare of the horse, to protect the safety of participants, and we also protect the public welfare. Sometimes, necessarily, those guiding principles come into conflict with certain industry people's desires to do or not do certain things according to the rules.

Ms. Lisa MacLeod: I'd like to move on to some specifics—

Mr. Rod Seiling: But you also asked me a question about the allocation of race dates, and I was going to turn it over to Mr. Blakney to deal with that part of it.

Ms. Lisa MacLeod: Okay. If we could do that, because I have some more specific questions with respect to that.

The Chair (Mrs. Julia Munro): Okay. Just one at a time here. We'll move on to the second part of the question. Mr. Blakney.

Mr. John Blakney: With respect to race dates, Madam Chair?

The Chair (Mrs. Julia Munro): Yes.

Mr. John Blakney: Going back to the foundation principles of the commission, we at the ORC approach matters in terms of race dates with respect to a fair and transparent process. That would ensure, and does ensure, Ontario racetracks and various stakeholders, including horse people, are involved in a process for the establishment and allocation of race dates.

On an annual basis, we have each racetrack in Ontario make an application for a licence to operate its racetrack. Those racetracks must file certain information with their application—fire safety and protection plans, racetrack security plans, racetrack maintenance plans. They have to ensure that their track is surveyed. They have to submit the track rules that they operate under locally, audited financial statements. We require the racetracks now, in the last year or so—we're working toward implementation of standardized financial reporting. Tracks have to provide backstretch improvement plans to back up their race date applications, their business plans, proposed race dates and so on.

We have a process for reviewing at the executive director level with respect to stakeholders on race dates—the applicant and horsemen's groups normally, or

anyone else who's interested in commenting. We submit those applications for race dates to the public for comment. Where the circumstances require, the executive director will meet with the relevant racetrack and the horsemen's groups to try to work out any kind of problems with respect to race dates. Taking all of that information in, and with considerable consideration given to the diversity of interests between the various groups—the racetrack interests in terms of their business and the desire of the horsemen to want to race—a decision is reached and—

Ms. Lisa MacLeod: Can I ask you a quick question?

Mr. John Blakney: I'm almost finished. A decision is reached and issued by the executive director. That decision is subject to a hearing before an independent panel of the commission board and is reviewed, if there is an agreed party.

Ms. Lisa MacLeod: How many lost race days have there been since 2005 per year? Would you know that?

Mr. John Blakney: Overall, as the chair pointed out, since the slot program came in we have increased race dates to the tune of 1,600. There have been race dates—I think the reduction has been around 80-some race dates that have been lost throughout Ontario, focused primarily on the Windsor Raceway. Recently, I think two years ago, there was a major reduction at the Woodbine Entertainment Group tracks.

Overall, though, I want to say on race dates, because it is a quasi-adjudicated process—that is where each party that wants to make a submission, and information that they submit is given consideration—decisions reached by the executive director or ultimately by a panel of the board overall in the last number of years, in terms of the total number of race dates that have been applied for, we have, overall, required race tracks to race more than what they've applied for.

Ms. Lisa MacLeod: Would you mind if I shifted gears just a bit to Mr. Seiling's comments toward the end, when he talked about the Quinte Raceway in Belleville, which has closed and is expected to reopen in 2010 with a brand new facility? We're all very happy about that. Would you be able to confirm whether the OLG entered into an agreement with the facility for 2009? They do not intend, obviously, per your deputation, to start racing in 2010. Is there a problem there contractually?

Mr. Rod Seiling: You would have to speak to the OLG. We're not involved in those issues.

Ms. Lisa MacLeod: Okay. Thanks for the clarification there.

The other one: Through reviewing the legislative report that we received, there are several operational reviews, reports and panels that have been alluded to. I'm wondering if you could put a price tag on internal operation reviews and other communications that you've put out to the horse racing industry for 2004, 2005, 2006 and 2007.

Mr. Rod Seiling: I'll turn that over to Mr. Blakney. He'd be better because it's an administrative responsibility.

Ms. Lisa MacLeod: Okay.

Mr. John Blakney: The total number over those years, as I understand it—the number we have is somewhere in the vicinity of \$700,000 that we've spent on reviewing various aspects of the commission. Our focus of attention has been on governance issues, with risk management, and again I say this has been consistent with overall government policy in terms of ensuring that risk management is reviewed on an ongoing basis. We've focused our attention on a communications audit to address issues that have been raised by the industry and also internally in terms of ensuring that we're communicating at a level that we absolutely need to be in terms of maintaining our best-in-class status.

We've reviewed at the officials level the adjudication process and we've received recommendations with respect to how that process can be improved, and the identification of any risks in that particular area. We've addressed the issues and concerns that have been raised by the industry, either formally or informally, on the practice of our investigations unit. Again, I mentioned a communications audit, and recently we engaged the services of the Ontario internal audit division on purchasing procurement.

The Chair (Mrs. Julia Munro): Thank you. We'll move on to Mr. Kormos.

Mr. Peter Kormos: Thank you kindly. I simply want to add to the observations by Ms. MacLeod that this inherent conflict in joint regulatory adjudicative bodies is one that's been commented on before. In fact, the government criticized that about the Human Rights Tribunal in the course of its dismantling a big chunk of that because it said there was an inherent conflict in policing, and then the same body that does the policing doing the adjudicating. I'm not suggesting that the ORC has been inappropriate in terms of how it has performed that, but it's not going to go away. It has to be addressed at some point with discussions about ways of addressing that and eliminating—as you well know the terminology—even the impression of conflict.

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Look, for Mr. Hudak, for me, for Mr. Craitor, if he were here, the elephant in the room down in Niagara is the 111-year-old racetrack, the Fort Erie Race Track, that has just laid off—what?—300-plus of its workers, leaving a handful. The city of Fort Erie says that it is responsible for up to 2,500 actual and spinoff jobs in Niagara. It's also the mainstay of our agricultural industry, short of the market farm. Short of the produce, the vegetables and fruit that are produced there, it's the mainstay of farming, the largest part of farming. We are very, very apprehensive.

Can you tell us a couple of things? What does it mean when it's reported that the racetrack, to have its 2009 licence approved to run races, has to satisfy you that it

can meet financial obligations for the year? What types of financial obligations is the ORC expecting to be met?

Mr. Rod Seiling: Mr. Kormos, I'll let Mr. Blakney answer, but I just want to clarify that this commission certainly is doing all it can within its limited powers to ensure that live racing continues at Fort Erie. We want that to happen and we're doing all we—

Mr. Peter Kormos: So do we.

Mr. Rod Seiling: We're doing all we can, as a regulator, to make that happen.

Mr. Peter Kormos: Let's find out what's happening.

Mr. Rod Seiling: There are certain requirements that the track has to comply with because of regulatory matters, and I'll turn that over to Mr. Blakney, because as executive director he is the one who has to be satisfied that those issues are satisfied before he can issue a licence.

Mr. John Blakney: Thank you. With respect to Fort Erie and its application for racing in 2009, we'll go back even a year before that, to 2008. We worked closely with management of Fort Erie and HBPA in terms of ensuring that our regulatory process would not stand in the way of live racing being successful in Fort Erie, although that's not to say that where the integrity of the licensing process has to be maintained, we are entrusted to do that to ensure that we're being fair and transparent about the process and ensuring that we're not setting an undue precedent.

Since 2008, Fort Erie has addressed issues with respect to licensing matters under request by the ORC with respect to submission of letters updating us and then subsequently providing an application for race dates for 2009. That application, on the face of what was submitted, was on condition that it would meet operational cost overruns. That also meant that if there were overruns, there would be stakeholder requirements. Stakeholders would have to help them out in terms of offsetting those losses.

That was and is a difficult condition for the executive director to deal with on the face of permitting a licence to be issued. However, because the financial issue was there and there was ongoing interest in terms of ensuring that Fort Erie would race in 2009, there was interest in terms of ensuring that the licence or the absence of a licence would not act as a barrier to ensuring that proposals, or what Nordic Gaming or what Fort Erie was considering doing, would not get in the way.

We extended the 2008 licence, which we're allowed to do under the legislation, to ensure that Fort Erie has every opportunity to resolve its financial matters and remove the condition, in terms of the 2009 application, for requiring stakeholders to offset any old cost overruns.

Mr. Peter Kormos: Help me understand this: The reason a racetrack competes or seeks more and more race dates is because they can have more and more occasions of paid attendance and betting. Is that fair? The reason the ORC monitors and controls the number and doesn't let the market alone prevail is—

Mr. Rod Seiling: There are a number of factors. First of all, you have to look at horse supply and the ability to put competitive races on. You have to look at the market and conditions within that market—is there customer demand for it; are there competing products out there?—all those things, and then you take into consideration what we call the general good for racing, which includes the industry and the stakeholders. I think earlier John dealt a little bit, when Ms. MacLeod asked about race date allocation—that goes into that whole mix. John, maybe you want to talk a little more about these particular matters. What factors do you use that bring you to a decision about a track's application for live race dates?

Mr. John Blakney: Yes. Expanding on the issue of race dates, it does apply in the case of Fort Erie. We can give consideration to the area of horse supply-customer demand; the availability of purse levels; the motivation behind live racing in terms of the racetrack owners and management; the financial impact of racing, which is taking into consideration the financial issues related—that may or may not be raised by the racetrack, but financial impact is taken into consideration. So in the case of Fort Erie, we continue to look at those particular variables with respect to the issuance of any kind of licence.

Mr. Peter Kormos: And Woodbine would be on the table as well in terms of its sharing a similar, or at least overlapping, market? This is a very difficult thing for us down in Niagara to debate, because we've learned to appreciate the Niagara casino's value as an employer, even those of us who were very critical of casino gaming. It has become the employer of last resort in Niagara. Unfortunately, it's laying off people now too.

One of the concerns we had some years ago now was that the casinos were going to dilute or scoop the gambling dollar. Anecdotally, we've seen it in our communities in terms of everything from church bazaars to bingos. I suspect—and of course we've got the second problem of being a border community as well—that folks in Niagara will go to racetracks in western New York. You see, you control other horse racing by monitoring it and regulating the volume, but you don't have any control over the casino gaming part of it, do you, how that competes with the decision the customer makes?

Mr. Rod Seiling: Horse racing doesn't operate in a vacuum. It's an entertainment option and it has to compete for customers. As I said in my opening remarks, our border tracks are suffering just like other border businesses are. As some of you know, in my previous life I was in the tourism business, and it's got the same problems. When you take a look at a Fort Erie track, where its business model at one time was built primarily on US customer business, and that tap is turned off almost entirely, it has a huge impact, and the impacts follow right through down the food chain. If you've been in Fort Erie in the past couple of years, you don't even see a US customer window anymore. There used to be at a time in Fort Erie, when you went to wager, more windows that dealt in US dollars than Canadian dollars. There isn't even one today that I'm aware of. So that tells you the

size of the problem. It's the loss of US business that has altered the business for anyone operating along that border in the entertainment business or in other businesses, quite frankly, as you know better than I do.

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Mr. Peter Kormos: And I think we're going to talk about offshore gaming schemes that don't comply with Ontario-Canadian regulations.

Tim Hudak is too young to remember, but Louie Gale worked out at Bill's pool hall at the end of King Street, and he did the horse betting there. When Louie died—he put two kids through university—Fort Erie's revenues increased exponentially. It was a remarkable impact on the revenues of Fort Erie. But you understand what I'm saying. All of us who rely upon casinos as employers are loath to be critical of the casino's role. In fact, we want to be as supportive as we can, but how is Fort Erie ever going to compete for gaming dollars? It's one of the best tracks in North America, isn't it? It's a great track. It's got a great dining room. It's got a great ambience. It's in the perfect location in the world. I've been there a few times, I assure you. So how do we protect horse racing?

Mr. Rod Seiling: I'm still optimistic that there will be, in 2009 and continuing, live racing in Fort Erie for years to come. Fort Erie has a good product. It still wagers on an annual basis over \$1 million a day. That makes it number two in this province, after the Woodbine and Mohawk tracks. So there still is a demand for the Fort Erie product. It's been savaged by a lot of things out of its control, just as other Ontario businesses have, and hopefully those things will be able to be dealt with. As I said, we're doing all we can to give it as much time as we can to allow people to find a solution to make it go. We don't have the ability to wave a magic wand and say, "You're back in business," but we're doing all we can from the regulatory side to give it the time it needs to find that solution.

You mentioned earlier about the offshore gaming; that's a problem. It's a problem we deal with. We're aware of it. It's out of our control. There's nothing that we can do about it. It is one of the facets of modern technology that people can get what they want through modern technology. So again, it goes to having your product available in many ways and forms and having it attractive enough that people want to patronize it.

Mr. Peter Kormos: I'm sure we're going to be talking about this more this morning.

The other facet that I was interested in was the legitimate off-track betting—Champions, I think they're called. Anecdotally, I'm not familiar with how strong the gaming is there. It seems to me that there's a problem because these places champion horse races in Sarasota, horse races electronically broadcast. We're not supporting Ontario horse breeding, we're not supporting Ontario live horse racing when we're giving gamblers access to those horse races. It doesn't do anything for horse racing in Ontario, does it?

Mr. Rod Seiling: Well, it does. I spoke earlier that it would be nice—we all long to go back to the good old

days, but the simple fact is we can't go back there. The genie's out of the box in terms of modern technology. So customers have ways and means to get whatever product they want—

Mr. Peter Kormos: And they always did. As I say, Louie Gale—

Mr. Rod Seiling: But far more. If you go back and look at—I referenced the \$1 million handled at Fort Erie. By far the majority of that handled isn't bet live at Fort Erie; it comes by way of intertrack. The problem is that you're now dealing with three-cent dollars versus 12- to 18-cent dollars, which you do on live racing. Intertrack, simulcasting, whatever you want to call it, is a mainstay of the business today, and customers will bet on Fort Erie—they may be located in California, they may be in Toronto, they may be in Vancouver, they may be in New York City, Florida or wherever. It is a facet of the entertainment business and the horse racing business today that it's there; it won't go away. As I said, you can't put the genie back in, because people will get what they want. If they don't get it from you, they can get it somewhere else. Again, we encourage our tracks to do that simply because, if you're not there, it also says something about the quality of your product.

Mr. Peter Kormos: Thank you kindly.

The Chair (Mrs. Julia Munro): We'll move on. Mr. McNeely?

Mr. Phil McNeely: Thank you, Chair Seiling.

In your opening remarks, you said that "we will never be loved by those whom we regulate," and I guess you're in the same situation as all police.

Horse racing is, of course, a huge industry and is third in agriculture after dairy and beef. That was a surprise to me when I looked at the brief to prepare for this. In our own area, Ottawa, Rideau Carleton is doing quite well. I see that in 1997, we had 77 live-race dates and now we're up to 150. I guess that slots were part of the reason that this has been possible. So from our own racetrack—I don't hear complaints; I don't read articles of problems. I think, probably, Rideau Carleton is very healthy.

I'd just like you to do an overview of what you do. Your business plan for 2008 to 2011 I have, so I guess you're coming up close to a business plan for the next four years—2009 to 2012. Could you look at your business plan and look at the major issues that you have and how you're going to deal with them? What is your strategy moving forward into 2009?

Mr. Rod Seiling: Thank you, Mr. McNeely. I'll turn that over to Mr. Blakney in a minute because developing a business plan is the responsibility of the administration. They develop the business plan after the board develops its strategic plan. We do have an annual retreat every year. We revisit the current condition of the industry and look and see where we are and what we need to do.

In fact, just about a year ago, we introduced a health, welfare and integrity omnibus—I don't want to call it a bill because we don't have bills, but it was the equivalent of that—which we've kept the administration quite busy with. They did an excellent job in implementing it, but

I'll let Mr. Blakney lead off. He may even want to turn it over to Mr. Lehman. They're responsible for developing the business plan. We have a rolling business plan; we keep updating it on an annual basis and move it along and they bring it back to the board for approval. But I'll let John speak to the details of it.

Mr. John Blakney: The two particular tools that the Ontario Racing Commission has that really set the direction of the commission—its vision—and establish its core values for operation and so on, and as a regulator, the kinds of priorities it gives, generally, are found within the strategic plan of the Ontario Racing Commission. We do that on an annual basis in terms of a review with both the board and management of the Ontario Racing Commission.

From the strategic plan, we receive our basic direction from the board, and from that, the administration, under my direction, develops a business plan for moving into the next year and really the next three years. We've been focusing our attention in terms of those kinds of priorities that we believe we, as a regulator, need to focus on in order to maintain our best-in-class level, and also ensure that our focus is really on the health and welfare of the horse, the integrity of the sport itself and the safety of participants in those key areas that the chair pointed out in his opening remarks.

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By way of process, we have introduced a consultation process with the industry where initially, when we begin to contemplate or think about initiatives or moving forward into the future, we do sit down with racetracks and horsemen's groups, industry groups and so on, all in one room, to discuss prevailing issues from their perspective. There are some, of course, where we as the regulator are limited in terms of what we can address, but we take from that our key initiatives that we, as the administration, believe that we have to move forward on, also giving consideration to the industry in somewhat of a collaborative way. So we've had meetings in the past with the racetracks and industry groups to try to grapple with prevailing issues within the industry.

Of the most recent, in 2008-09—I think we provided you with a copy of the 2008-09 business plan moving forward to 2011. On pages 22 and 23 we outlined some major key initiatives which are really the first four that we believe that we needed to move on this year. Of course, we provide a report back, as the year evolves, on how well we're doing in terms of implementation.

We will continue to focus on ensuring that the Ontario Racing Commission provides a fair, competent, transparent and professional service to the horse racing industry. We'll ensure that there are collaborative efforts and involvement; we have those processes in place and have been using them. Out of those, in 2008-09, we've been focusing on the implementation of the horse improvement program, a vital and popular program throughout North America with respect to the improvement of the horse. We're looking at restructuring our rules and trying to ensure that our rules become simpler,

clearer and more usable in trying to ensure that our users, the participants, will be able to understand integrity issues as they evolve out of the rules. We have been trying to, with a major effort, establish standardized financial reporting of racetracks so that we all can share in improved information that will improve decision-making, not only within the board level but also within the racetrack component of the industry and the industry in general and, as the chair has mentioned, implementation on the regulatory health and safety measures.

Moving into the future we will be, again, continuing to concentrate on these areas and trying to ensure that the needs of the industry are reflected in our regulatory systems and processes; ensuring that we, as the experts on the regulation side, have things in place; that we can be contemporary, modernized and ensure that we're meeting effectively those needs that are both internally ours, that we recognize, and those of the industry.

Mr. Phil McNeely: If you look forward, then, to 2009, you mentioned a few initiatives that you have. What is the most important one? What do you see that you can key on in 2009 and achieve? What do you expect on your most important initiative, then, on your business plan?

Mr. John Blakney: I'll focus on two quickly. One is, we will continue to focus on new initiatives in the equine medication control area. Any particular abuse of equine medication undermines integrity within the industry, and we will continue to focus major efforts on those areas and ensure that we have the most effective means, tools and systems to ensure that we have control of any activities related to equine medication abuse.

The executive director's focus is ensuring that we have the financial ability to meet future needs, and that means that we find new efficiencies in our system in terms of trying to ensure that we remain at the same level of revenue requirement that we're at now. However, under the continued pressure of meeting the demands and expectations of the public and the industry, we'll continue to manage in an effective and efficient way, but our focus of attention has to be ensuring financial efficiency and effectiveness.

Mr. Phil McNeely: Just one last question that I have is international strategic efforts, number 10 in your key initiatives. It relates, I suppose, to your comparison with your peers. I suppose this would be mostly North America, but I haven't looked at the context of it. I'm asking you to be objective: How do you rate the ORC with other organizations of equal duties across North America?

Mr. Rod Seiling: I did reference, Mr. McNeely, third party endorsement. I think that's always the best. I don't like to blow our own horn, but we are recognized as best in class across North America, and if you look at the quote from the Daily Racing Form, that says it all, in my view. We're a leading member of the Association of Racing Commissioners International.

There are a number of initiatives going on right now. I came back from a board meeting not too long ago on a

couple of major initiatives. As we went around the table, the question, "What's Ontario doing?"—and a lot of them are saying, "We're waiting for Ontario to make its decision on how we're going to go." So we are viewed as being very competent, very fair and very professional. We have to be, because we have the most number of races in North America. We have the largest industry. It's incumbent upon us to be the best, and we take great pride in being the best.

As Ms. MacLeod was talking about, being the best doesn't mean that there isn't going to be someone out there who is not 100% happy with the job you do. We recognize that and understand it. A large part of that angst out there results from not understanding. You asked Mr. Blakney about things to do from the board's perspective. We continue looking for and exploring better ways to communicate because we have licensees—good, hard-working people, mostly rural people. As you know, for those who come from rural ridings, not that many of them are hooked up to the Internet. So the ability to connect today with people, to a large part, in an organization such as ours, that large and with that large of a group, becomes a large problem which is complicated by the due process, because there are lots of times when there are things we can't say to interfere with what's going on, what our judges are doing, what the ministers may be doing, or even taking it further down the line through a *de novo* hearing. We're restricted, a lot of times, in what we can and can't say at that point in time, so we're always looking at better ways to inform the industry, to keep them current about what's happening and have them understand. But a large part of it is because they don't understand the separation and what our powers are, conveyed by the act.

For example, we don't reveal the powers, and so if something happens and the event is over, you can't redo it. Yet, if someone feels that they were ill done by, there's nothing we can do about it, because the event's gone. You can't rerun a race if it's run. So things like that, not understanding that we don't have powers like that, can grate on a person; we understand that.

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Mr. John Blakney: Just adding specifically to the point that the international decides what the chair has indicated: The Ontario Racing Commission, as I said earlier, focuses on a very important integrity issue, and that's medication control. In order to meet the challenges of a very complex issue, one that transcends boundaries internationally and that touches our boundaries and within our own jurisdiction, one of the areas we are focusing on at the administration level is the development of an international intelligence co-operation effort—at the international level, not just with US jurisdictions—where we're developing very strong relationships. Intelligence sharing, because of the complexities of the medication issue, requires more information exchange at an intelligence level so that we can learn more about new drugs and new areas that we need to focus on in order to curb any kind of challenge to integrity through medication.

We work very closely with our federal counterpart, the Canadian Pari-Mutuel Agency. We've made presentations at an international level at the World Trotting Conference of the International Trotting Association, purely on our initiative, indicating the need for greater intelligence sharing, skill development in investigations and how we go about doing our investigative business, research and development, a focus on science. All this needs to be done in a collaborative way at an international level. That's what we've identified. That is an area where we believe we need to focus our attention; for example, in the area of medication control.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on. Mr. Hudak.

Mr. Tim Hudak: Chair Seiling, it's good to see you again. Mr. Blakney, Mr. Lehman, thank you for taking the time to be here.

I want to pursue in this round of questioning the situation with the Fort Erie Race Track, as my colleague Mr. Kormos has done. It's no longer in my riding, but the effects on my riding—of course, being a Fort Erie boy, born and raised, it's an issue very near and dear to my heart. Mr. Craitor, not in attendance today, will be making his own inquiries, I fully expect.

Mr. Kormos outlined 300 employees who have been given layoff notices. It impacts probably about 2,500 to 3,000 jobs, depending on the measures that are used, in the community. What's the impact also on the thoroughbred industry if the Fort Erie Race Track were to close down?

Mr. Rod Seiling: Any time you lose a racetrack, the ripple effect goes through not only the people who work there, directly employed by the track, but on the horse people's side as well: jockeys, trainers—on the horse breeding side. You've shut down a store, so that store is no longer selling that product. You have less demand, so you cut back on supplies, and the ripple effect goes all the way through. We recognize that, and it's one of the reasons why—for a whole raft of reasons—we're doing all we can from our side to ensure that we are not a problem in terms of surviving.

It impacts our staffing as well, so we aren't immune. We have people who work there in full-time jobs. If there's no racing, their jobs are at risk. So from purely self-interest, we're interested as well. Certainly that's not our major focus, but we have a great deal of empathy for all those people and we certainly are cognizant of the impacts if it closes.

Mr. Tim Hudak: I appreciate that.

Mr. Rod Seiling: John, I'll turn it over to you for your perspective.

Mr. John Blakney: Just a comment, Mr. Hudak. Even though the Ontario Racing Commission has never really declared itself an economic regulator of the industry—it hasn't expanded its authority to get into the business of the industry in any way other than through regulation—we know that what we do every day impacts on individuals, groups, associations and racetrack associations. In the same way as Fort Erie, we understand that every step

that's taken with respect to jeopardizing Fort Erie's future is a major concern to the Ontario Racing Commission. We take those matters into consideration but, as Chair Seiling has said, there are limits in terms of what we can actually do. We've used an instrument in terms of our ability to—

Mr. Tim Hudak: I appreciate the answer and I appreciate the concern. I think, as you know, time's limited for our question-and-answer session. Specifically, by way of example, Fort Erie often supplies additional horses to Woodbine. A lot of staff move back and forth between the two sites. Could you tell me what the impact would be on WEG of the Fort Erie Race Track closing down?

Mr. John Blakney: There may be a migration of some better horses to—I guess, getting to my point, sorry.

The loss of Fort Erie would have, in my view, a significant impact with respect to the thoroughbred. One is that, according to information provided—anecdotal, that is, from the HBPA—if we lose the colony of individuals—the trainers and the owners and so on—in the Fort Erie area, they will migrate to other racetracks. There's only one other in Ontario, and that would be Woodbine, for those better horses. Those who would be normally at racing levels at Fort Erie would probably migrate to similar tracks in the US. So the longer the situation at Fort Erie remains unknown, the more difficulty the thoroughbred colony at Fort Erie will have.

Mr. Tim Hudak: So basically there would be a significant exodus of the horse population and the talent outside of the province of Ontario.

Mr. John Blakney: I think that's fair to say, yes.

Mr. Tim Hudak: How about on the breeding side? What's the impact on breeding and then agriculture of the Fort Erie track closing down, in a larger sense, on the province of Ontario?

Mr. Rod Seiling: All you have to do is take a look at the number of races. Assume 10 horses per race, 10 or 12. So there are 120 horses. You take that out of the food chain. Those are horses that don't need to be bred; there's no buyer. So if you're a breeder and you are breeding your mare to a stallion and there's no buyer anymore, you're going to stop breeding. You have the ripple effect back through the agricultural community.

Mr. Tim Hudak: Of significance? I mean, if Fort Erie had on average over the past 10 years, say, 100 racing days and Woodbine, for the thoroughbred side, had on average 150 racing days?

Mr. Rod Seiling: It would be 200 and some.

Mr. Tim Hudak: So we're looking at maybe about 40%?

Mr. Rod Seiling: Yes. I think Woodbine, if my memory serves me right, has over 200 race days, but—

Mr. Tim Hudak: But on the thoroughbred side.

Mr. Rod Seiling: I'm talking about the thoroughbred side. They race early April to December, so five days a week. But anyway, it's significant.

Mr. Tim Hudak: How many other racetracks are losing money? Nordic estimates that if they operate this

year, it will be a \$7-million to \$8-million loss. How many other racetracks are losing money?

Mr. Rod Seiling: Remember my disclaimer earlier?

Mr. Tim Hudak: I'm not asking about specific tracks; I'm asking how many in total are losing money.

Mr. Rod Seiling: That's something that doesn't come to the board specifically, but I'll turn that over to Mr. Blakney and Mr. Lehman, who receive those reports. We don't see them.

Mr. Tim Hudak: Okay.

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Mr. John Blakney: I'm not sure that there are—I'm doing a guesstimate. Probably it's something that we could check out and provide more specific information on—how many tracks are losing money. Steve, do you have any observations?

Mr. Steve Lehman: Through the licensing process, they do submit audited financial statements to us. One of the other indicators that we can actually tell those—when we're placing the race dates, there is, as Mr. Kormos mentioned before, a requirement for them to prove that they have the financial wherewithal to deliver on racing, and that hasn't been an issue for several years. So we take that as another proof to mean that financial situations aren't that bad among tracks.

Mr. Tim Hudak: In tracks aside from the Fort Erie Race Track.

Mr. Steve Lehman: It's very few that are struggling to maintain their race dates.

Mr. Tim Hudak: And as you review the applications for race dates each year, do you know approximately how many other racetracks, aside from Fort Erie, are losing money?

Mr. Steve Lehman: We get their audited financial statements, so we would know that, absolutely.

Mr. Tim Hudak: Yes, but is it nine? Is it three?

Mr. Rod Seiling: To keep out of trouble, I think what he said is that financial considerations are taken under each separate racetrack application, and that issue hasn't come to bear on any application.

Mr. Tim Hudak: I appreciate that.

When did the ORC become aware that the racing season in Fort Erie for 2009 was in jeopardy?

Mr. John Blakney: I guess I'll address that. As I indicated earlier, concerns were raised regarding their 2008 application. Anecdotally, I think there were movements then from Nordic Gaming to look for assistance or to advance their development in terms of new projects to assist—

Mr. Tim Hudak: So the submission of the 2008 racing date request would be—what?—in the winter of 2007?

Mr. John Blakney: It would have been in August 2007.

Mr. Tim Hudak: So we've had almost 18 months since the ORC became aware. Did the province of Ontario, the government, become aware at the same time?

Mr. John Blakney: As I recall, I think the only formal information I had with respect to Fort Erie was their concerns over the ability to meet the race date levels and in conversations I had with HBPA with respect to their concerns. I don't recall any direct involvement as far as the ORC was concerned with respect to government.

Mr. Tim Hudak: Okay. So did you or any of your staff notify the ministry that racing at Fort Erie Race Track was in jeopardy, and if not, why not?

Mr. Rod Seiling: Mr. Hudak, we're aware that Fort Erie had development plans for the track and had been couching those in terms that those plans were contingent on continuing to keep live racing going, and we were talking to a number of people. It's no secret that for the 2008 date application process we publicly made a special allowance for Fort Erie to table their race date application after the submission date had closed, allowing Fort Erie to continue discussions with the town and with other stakeholders, other governments. I think it's fair to say that there has been a whole raft of agencies, government and non-government, working alongside in their own capacity to try and help Fort Erie through those difficulties. A lot of people have done what they could throughout this time period.

Mr. Tim Hudak: So who's in charge? Which ministry, which minister, which regulatory agency is in charge of ensuring that track stays open?

Mr. Rod Seiling: Currently, racing is the responsibility of the Minister of Energy and Infrastructure. It just got moved about six, nine months ago. Prior to that, it had been with—what the latest terminology is—the Ministry of Government Services, and has been in what you would have known for years as CCR, for want of a better term. So it's been an iteration of that ministry for quite some time until it was recently moved.

Mr. Tim Hudak: My point being, the government will likely have known as of August 2007, if not before—I expect contacts had been made at least, not by the local member, but probably by the HBPA or Nordic directly to government—that racing was in jeopardy in future years. I'm sort of confounded as to why nothing has been done over 18 months that could put us in this situation today, of that great oval closing down.

Is the government making money off the slots there?

Mr. Rod Seiling: You'd have to check with the OLG. I believe that there's a return there, but certainly not to the extent it once was.

Going back to your earlier comment, it's my understanding that the government did provide some form of assistance. We're not directly involved because it's not within our purview to be, but I think that through economic development, there was some money that flowed to the town of Fort Erie that may have been related to those discussions; I don't know.

Mr. Tim Hudak: Did it work?

Mr. Rod Seiling: The track operated in 2008, so I guess one might say that the proof's in the pudding.

Mr. Tim Hudak: Was there an expectation that in 2009, similar money would—

Mr. Rod Seiling: You'd have to talk to the government. That's not our area of responsibility.

Mr. Tim Hudak: I guess back to Mr. Lehman: When you review the applications by the tracks, you would know the percentage that would come in, both to Nordic and the horsemen on an individual basis, via the slots?

Mr. Steve Lehman: That's right.

Mr. Tim Hudak: So how much is coming into the government then? Is it 80%?

Mr. Steve Lehman: The municipalities also share in a portion of it, and then the majority of the net win would go to the Ontario Lottery and Gaming Corp.

Mr. Tim Hudak: So roughly—remind me—78%, 77% of their revenue?

Mr. Steve Lehman: Seventy-five per cent, something in that range, would probably be about right.

Mr. Tim Hudak: I guess back to Mr. Seiling: Let's say the racetrack does not operate in 2009—we hope that is not the case, but it is a possibility. Will the government then close down the slots?

Mr. Rod Seiling: I'll turn that over to Mr. Blakney because that goes back to the licensing responsibility and the reason for the extension. That's his area of expertise and responsibility.

Mr. John Blakney: The short answer is, I can't speak for what the OLG will do in the case where a licence is not issued for 2009.

Mr. Tim Hudak: I thought it was obvious. The program was to help the horse racing industry not only survive but prosper. It was initiated back in 1997, or whatever it was, so I thought: no horses on the track, so no slots.

Mr. John Blakney: Again, the Ontario Racing Commission regulates horse racing. It is totally committed to live racing and to ensuring, with the tools and instruments it has, that live racing continues, even at Fort Erie, considering its challenges. But the point is that if there is no licence and if there is no racing at Fort Erie, that will be a decision the OLG would make.

Mr. Tim Hudak: But why isn't there a decision? I thought that was government policy, that you could only have slots at a facility if it was either a standardbred or thoroughbred racetrack, or quarter horse. Has something changed?

Mr. John Blakney: Again, I can't comment beyond the powers of the Racing Commission Act. That doesn't include decisions related to the OLG.

Mr. Tim Hudak: Is that not your understanding, though, that that's the premise for the whole slots-for-racetracks project?

Mr. Rod Seiling: I think what Mr. Blakney is trying to say is, you may be right, but it's not our decision. We can issue a licence or not issue a licence; what happens after that is not up to us. We're not saying you're wrong, but we're not—

Mr. Tim Hudak: You've got to agree with me, though, right? This would be preposterous. You close down a track—

Mr. Rod Seiling: I can't speak for another agency, nor can any of us. We have limited powers and abilities. We take it up to there, and what happens after that is up to somebody else, not us. We can't say, "It's shut down," or, "It's not shut down." It's not our purview.

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Mr. Tim Hudak: Doesn't it seem—I mean, it's pretty straightforward: If the province is raking in 77%, 78% of the revenue from the slots, they're making money from the slots. The racetrack is in jeopardy of closing. Doesn't it make a lot of sense, at least in the interim, to shift the slots for revenue—slots at the racetrack program—to enable the Fort Erie racetrack to continue operating? Isn't that pretty basic?

Mr. Rod Seiling: That's a policy decision. That's not ours. We can't answer that.

The Chair (Mrs. Julia Munro): Thank you. I think we have to move on.

Mr. Peter Kormos: Thank you, Chair. We're still talking Fort Erie.

Mr. Rod Seiling: Why am I not surprised?

Mr. Peter Kormos: Well, you shouldn't be.

Mr. John Blakney: Could I just say—

Mr. Rod Seiling: We're still talking Fort Erie?

Mr. Peter Kormos: Go ahead. Yes.

Mr. John Blakney: There's one important factor when I say that we've taken on the responsibility with respect to Fort Erie, in terms of carrying out our mandate. One of the things we have done is to ensure that the purse account money, the horseman's side of the slot money, is secured. I can ask Mr. Lehman to explain how we've gone about doing that. We've worked with the racetrack and we've worked for the horsemen group to secure those ongoing funds while the slot facility continues to operate, and it would continue to operate given its extended licence with the racetrack now, as the given in-year, because they're in off-season.

Mr. Peter Kormos: And it's clear that the slots are OLG turf, right? We don't quarrel with that. Your response to the questions put to the commission point out that as the ORC has responsibility for regulating the racetracks and oversight of the horseracing industry at times, decisions made by the OLG regarding racetracks can affect the ORC. I think that's what Mr. Hudak is talking about, and I am too. Look, nobody's suggesting that you can tell the OLG what to do, but when you have concerns about OLG decisions, surely you're entitled to formulate them and then articulate them.

Also, you say you're not an economic regulator. I appreciate in the pure sense that you're not; yet, when I listen to you and I read your material, your broader agenda is to ensure the viability of live horse racing, by ensuring its integrity and by ensuring the economic viability of racetracks, and you do that by determining race days, and, amongst other things, by needing audited reports. This is our question: Was there ever any relationship between ORC and OLG that created a model for how many slot machines—if the slots are there only—to help sup-

port the track? In 1996 the government's rate was reduced from what: 7.5 to 0.5?

Mr. Rod Seiling: Five to 0.5.

Mr. Peter Kormos: Yes, so that was a remarkable reduction there. I remember that struggle on the part of the horse track people and the horse industry.

Look, if the slots are there—and I think this is what Mr. Hudak might be trying to address as well—why are we not expressing more concern about their being there for the right reasons, so that a racetrack owner can't turn a live-race facility into a casino through the backdoor?

Mr. Rod Seiling: First of all, to the first part of your question, we don't regulate per economic viability, but certainly we recognize that in our decisions; there's no question about that. So while we have our guiding principles, you can't ignore the real world.

In terms of the OLG site-holder agreements, the racing commission has never been a party to those agreements. We weren't consulted. I wasn't around at that point in time but I've reviewed the documents. The racing commission was not consulted at all on those deals. The government of the day made those arrangements in conjunction with the racetracks, and I'm aware that they did consult with horse people at the time. Mr. Hudak would be more familiar with that because he was part of the government at that time. The racing commission was left out for whatever reason. We've never been a party to it. All we see is a site-holder agreement—we're aware of it. I mean, we have not asked to comment during those time periods. We're aware of it. You asked about the number of machines: not our area. We have nothing to do with that. That is something between the OLG and the various site holders.

Mr. Peter Kormos: Knowing what the OLG's mandate is, is there any governmental body that has more authority and information about the live horse racing industry than the ORC in this province? Is there somebody we should be talking to, besides you, about this? It seems to me that you're the guys.

Mr. Rod Seiling: I think that's the safest—

Mr. Peter Kormos: You know more than anybody else knows about this.

Mr. Rod Seiling: I think that's a safe assumption.

Mr. Peter Kormos: Okay. And that's why we're asking these questions, because we're concerned. We need some counsel here. You pointed out the problems with 9/11; the reduction in cross-border travel by Americans; the racetrack says that the ban on indoor smoking has been a problem. That's not going to change. We know that. That's never going to be rolled back. That genie is not going to be put back in the bottle. Competition from other gaming venues, casinos: We know that that's not going to change. Online wagering: I presume they're referring to either Champions-style or, more so, the off-shore betting stakes.

Mr. Rod Seiling: I think that refers to offshore, the unlicensed offshore.

Mr. Peter Kormos: And again, that's something that involves the federal government more than the province, and in and of itself is very difficult to police.

Mr. Rod Seiling: The one good thing about that, if I might just interrupt: Anecdotally, anyway, it appears that some of those bettors—and I'm not saying all of them, obviously, and we can't track them, but certainly the racetracks know who their customers are and know when customers leave and when they come back. There appears to be a migration of online customers back to bet through legal means, which is a good sign.

Mr. Peter Kormos: Having noted that, and the government's not going to drop its revenue take beyond 0.5%, and even if it did, it wouldn't be as substantial as the reduction from 5% to 0.5%, what can be done to protect—you said you're confident Fort Erie will be there in two years' time; I'd like to share the optimism. What, from your perspective as the group with the most expertise about live horse racing in this province, should be being done to ensure the viability of Fort Erie?

Mr. Rod Seiling: Well, I understand—

Mr. Peter Kormos: That's a fair question, isn't it?

Mr. Rod Seiling: It's a fair question. All your questions are fair, some more fair than others. I understand, and I'm sure you're aware and so is Mr. Hudak, who is from that area, that there is a proposal on the table right now that the town of Fort Erie has made—

Mr. Peter Kormos: If I can interrupt, they want to run it as a non-profit. Nordic says it's already being run as a non-profit. That's what they say, so there's nothing novel about that.

Mr. Rod Seiling: Well, again, I can't get into the individual business operation, but obviously, if one were to take away certain debt loads that aren't there anymore, perhaps there's an opportunity. We're not involved in the offer or discussions between the town and Nordic, and so in fairness, one of the things the commission has done is that Mr. Blakney issued an extension on the licence to allow those talks to continue. Hopefully, they will conclude sooner rather than later and are very positive, and that's why I give my reason for optimism. I have great hope that those talks will come to a positive conclusion and that there's the wherewithal within the various stakeholders to make that happen. We don't have any influence on it. We don't have any ability to do anything about it. We are third hand, anecdotally aware of those things. Hopefully, from what information we've been told, there is cause for optimism.

Mr. Peter Kormos: You're not quite as removed as you say you are. I read the memorandum of understanding to the Minister of Government Services and the Ontario Racing Commission, and it says that one of your mandates, one of your responsibilities, is "to ensure that information is provided to the minister in a timely manner concerning all matters of an urgent, critical or relevant nature which arise out of the work of the commission and which require the attention of the minister." It seems to me that your counsel in this regard would be

the very sort of thing that's being called upon you to do, by virtue of that MOU, isn't it?

Mr. Rod Seiling: And we've fulfilled our mandate, I can assure you.

Mr. Peter Kormos: So the ORC has counselled the minister as to what can and should be done by the government?

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Mr. Rod Seiling: No, we have informed the minister of the problems as they relate to Fort Erie. That has been an ongoing communication for some time in terms of making them aware of the problem, and quite frankly, other people through other means have been doing the same thing, so it's not new. The government is aware, and it's my understanding that they've been doing what they can within their means to try and help find a solution. We're not privy to those—we offer information. We do that and we fulfill our responsibility under the MOU. I can assure you, as I said earlier, we've done that.

Mr. Peter Kormos: You talked about the money being bet on-site versus money being bet off-site, both by bettors in Canada and the United States. Is there data? Do we know, for instance, how much American attention Fort Erie attracts as compared to other racetracks and whether it's from California, whether it's from Florida, whether it's from British Columbia?

Mr. Rod Seiling: Yes. There is.

Mr. Peter Kormos: How is that information compiled? Somebody's got to tell me which page it's on right now.

Mr. Rod Seiling: Steve, do you have anything handy with you right now? If you've got it, just read it out.

Mr. Steve Lehman: In the annual report, we do give statistics. I'll refer to our annual statistical report, 2006-07. That's the most recent that you would have in front of you. You can actually see, towards the back—I reference pages 28, 29; that gives you an example of the various types of wagering.

Mrs. Liz Sandals: We don't have 28 and 29.

Mr. Peter Kormos: See, mine stopped at 27.

Interjection: Mine too.

Mr. Peter Kormos: I feel better now that I asked the question.

Mrs. Liz Sandals: And we've been equally treated. We both got cut off.

Interjection.

Mr. Peter Kormos: Well, there. Lisa's in the know. All right, so—

Mr. Steve Lehman: I actually noticed in the production of my book that some of the final pages of that annual report ended up in the back of the following tabs. You may actually just want to dig in a little bit deeper. There's another annual report there and there's also some pages that belong to the previous tab.

Mr. Peter Kormos: I suppose what I want to underscore—

Interjections.

Mr. Rod Seiling: We can give you the number if you want.

Mr. Peter Kormos: We'll get them. I'll get them soon. They are available.

What I want is to underscore the sort of perfect storm qualities of the racetrack in Niagara: border; depressed area—both the Niagara frontier and Ontario; and a major, the flagship casino. I suppose people in Windsor wouldn't say that, but the flagship casino almost within spitting distance. That's a pretty intense set of circumstances that other racetracks may not share, although the proliferation of charity casinos and the slots is pretty broad-based across the province. Are there special things that have to be done for Fort Erie that may not have to be done for other racetracks, and is Fort Erie put at exceptional risk because of its positioning in what that over-clichéd phrase, "perfect storm," speaks to?

Mr. Rod Seiling: I can only answer you from the regulatory side, that we will do and have done and continue to do anything we can do within our ability, under the purview that we've been granted through the legislation, to continue—not just Fort Erie, any other track—to keep them viable and keep them racing. As I said earlier, we are committed to the slots-at-racetracks program and we work and do all we can to ensure that the maximum return goes back to the industry; not just racetracks, but horse people and the breeding industry, because we recognize the chain that feeds through the whole agriculture community. We have done and will continue to do anything at all possible to make sure that happens. I think, as we said earlier, Mr. Blakney's extension of the license, which is, in my recollection, a first, bears witness to how far we will go within what we can do to try and help Fort Erie.

Mr. Peter Kormos: Various horse people are going to be here this afternoon. In the context of Fort Erie and its survival, you've already anticipated what they're going to criticize you for in other respects, and that's more than fair enough; you would know better than anybody. What are they going to say about the ORC and what it has or hasn't done with respect to the survival of Fort Erie Race Track—fairly or unfairly?

Mr. Rod Seiling: I'll let Mr. Blakney answer that because I couldn't.

Mr. John Blakney: This is more of a projection in terms of what they might say. I think the thoroughbred horse people at Fort Erie, from a letter I received yesterday from one thoroughbred owner, have a significant concern with continuing the present process. His concern—whether or not he fully understood the situation—is that if Fort Erie were to race, let's say, beginning in June or in May, it would be very difficult for horses to be prepared and ready to be raced within the normal time frame. So there is a concern, I think, with respect to the horse people that my action as executive director to continue into March or extend the licence—all indications are that they may not agree with what I did. I think, in reference to that, that's what you may hear.

Mr. Peter Kormos: Thank you kindly.

The Chair (Mrs. Julia Munro): We'll move to Ms. Sandals.

Mrs. Liz Sandals: I want to spend time talking a little bit more about race dates and also about some of the drug management issues.

First of all, on the race date issue, we've spent a lot of time talking about Fort Erie and some time talking about process in terms of race dates. I wonder if we could talk a bit about some of the other underlying issues that drive the race date discussion.

When I looked at the data that's in the annual report that we were just talking about and looked at page 25, it actually looks quite favourable, because when you look at the thoroughbred race dates combined, Woodbine and Fort Erie, they are pretty consistent over the years. When you look at the total standardbred dates, they go from 1,100 to over 1,400 in the period up to 2006, and that sounds pretty good. But then when I look at some of the material that you gave us today, when we look at the chart we see the number of dates for standardbred—I'm looking at "Ontario Standardbred Race Dates." When we look at the chart up to 2006, we see that 2006 is actually the peak, and then as we look forward, it goes down in 2008. It looks like you've actually driven the number of dates back up in 2009 to start addressing that issue.

I wonder if you can talk a little bit, from a policy perspective, about the interplay between the wagering money perhaps going away to other venues, both in terms of wagering on the races and the income from slots. Then I notice that you've also included in the package a decision from—actually it seems like two disputes, one with respect to the race dates at Georgian Downs and one with respect to the standardbred race dates at Woodbine. I wonder if you could give us a bit of a sense of the issues that were there and what the commission was attempting to do with the decision that ultimately came in terms of Georgian Downs and Woodbine. Clearly, when you look at the charts, there is a problem. If you're not racing horses, you're not making money, from the point of view of the horse people. Is this an attempt to address the issue, and what's the approach the commission is taking in this decision? Okay?

Mr. Rod Seiling: Great; thank you.

Mrs. Liz Sandals: Big question.

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Mr. Rod Seiling: There's a lot there, and if we don't get it all answered, I'm sure you'll remind us and we'll come back and cover it all off.

First of all, on the total number of race dates, they've gone up to over 1,600 from pre-slots, and yes, there was a slight dip. As Mr. Blakney said earlier, the majority of those go back to Windsor. Windsor had attempted to expand its season to a year-round. It was never a year-round facility in its heyday. It didn't race in the summer. It has started to race in the summer. In addition to the border issues—and Windsor has many of the issues that Fort Erie has—it also had horse supply issues. It couldn't fill the races. There simply weren't enough horses there for the year-round, and its attempt, as well—

Mrs. Liz Sandals: And given the location, I'm guessing that many of the horse owners who are more located

in central and western Ontario didn't want to ship all that way.

Mr. Rod Seiling: There's that, because in the summertime they had opportunities from some smaller tracks that opened up for the summer. As well, Windsor has always depended on US horses. Even to this day, without the availability of horses shipping in from the United States, they'd have difficulty filling their races.

The other thing that was impacting was that, in trying to extend the season, they were impacting their purse pool to such a degree that their level of purses was falling so that they were now non-competitive and Ontario people could race for more purses someplace else, and maybe even closer. It was an attempt to try and reach a compromise where we could keep Windsor viable and keep it attractive for the horse people to race for an adequate purse to go there.

Mrs. Liz Sandals: So when we see this peak in this chart of going up and then dropping down, is that mainly related, then—this dramatic peak—to being pushed up by Windsor and dropped down by Windsor?

Mr. Rod Seiling: To a large part. It's not all Windsor, but a large part of it. There were some other—during the heyday—tracks that expanded as well and found out that the business wasn't there to support their days, whether it be horses, customers or whatever.

Going back to the Georgian decision, first of all, it was reported in the House, unfortunately, incorrectly. There was no loss of race dates at Georgian Downs. What the commission did—at a hearing at which everyone was allowed to present their side and advocate for their position—is agree to allow Georgian to reallocate all of the dates that it normally and traditionally raced during January and February to another part of the year.

Mrs. Liz Sandals: When it's warmer?

Mr. Rod Seiling: When it's warmer, for sure, but we did it for a number of reasons. One: If you look at every successful sporting business that we know of, it has a season; it doesn't go year-round. It has a season where you can market it. It opens; it closes; there's something to talk about. Open, closed, whether it's baseball, hockey or you name it, they have a season.

This is a one-year experiment only. The decision of the commission is for the 2009 race date season. In terms of application, it would revert back for 2010 to its traditional dates, unless it's reapplied for and approved. We wanted to see whether there was some good business reason to have Georgian operate on a season and allowed to have those benefits.

We also were quite aware that, given where Barrie is located, anyone in this country knows that they get a lot of snow up in that area during the wintertime.

Mrs. Liz Sandals: Especially just south of town there; it whips like mad.

Mr. Rod Seiling: Yes.

Mrs. Liz Sandals: I also watched the races at Georgian Downs while stuck in traffic just south of Barrie while going northbound. This is where I view the races from.

Mr. Rod Seiling: So we had a concern about safety issues. If, in fact, there would be no loss of opportunities for horse people—they had the same number of racing opportunities—but they didn't have to truck their horses from who-knows-where into that area, not knowing whether they're going to get there or get home—or we've had occasions where they've shipped all the way there, driven through all kinds of snow and blowing, only to get there to find out the races were cancelled. It was an attempt to try and find: Is there a better way of doing something and not lose any racing opportunities?

It also allowed the administration to add some more days to the Woodbine application, which Woodbine opposed and which, at this hearing, the commission adopted and agreed with and then said that there will be extra horses around, more racing opportunities—let's try that as well.

Mrs. Liz Sandals: So there are more winter dates at Woodbine?

Mr. Rod Seiling: There are eight extra winter dates at Woodbine. When we took away or allowed Georgian not to race their dates in January and February, we added eight dates in the winter to Woodbine's schedule.

Mrs. Liz Sandals: So is that something that the commission has traditionally done, sort of moving them from here and there, or is that taking a more activist role in trying to manage the race dates than perhaps happened previously?

Mr. Rod Seiling: It's a more proactive role, recognizing that there are a whole bunch of influences out there that affect customer demand, but also horse people. So we tried to balance it. We ensured that there wasn't any loss of opportunities. In fact, when you net it all out, there are more racing opportunities as a result of that decision than there would have been. We have to wait and see what happens with the extra dates at Georgian during this summer, but again, it's an experiment. It's one year; it has to be reassessed.

What we also did during that decision is order the administration to pull the horse people together to try and find some agreement on a business model. I spoke earlier about a large part of the angst and the mistrust within the industry. It goes back to some of the comments Ms. MacLeod made earlier, that the horse people and race-tracks are not operating under the same business models. They look at the same set of numbers; one comes up with one and one is two, the other one comes up with a different number, and they both believe they're right but it's because they're fundamentally operating under a different business model. We're going to use the administration of the commission to act as a facilitator, much as we do on many, many issues, to try and see if we can get them to agree on a common, accepted business model: "Here is a business model."

We're also, during that same decision, going to get them to agree on a methodology for counting horse supply. One side—you can guess who—argues that there were all kinds of horses that weren't being raced. On review of it, it became quite evident that there weren't

quite as many there because a horseman might enter a horse for three different classes at the same time. That horse can only race one time, but it was being counted as three horses, so there was a discrepancy. Again, the two sides couldn't agree on the horse supply. We believe that if we can get people to get to the same documentary base, there's a better chance for getting people to reach some agreement.

Mrs. Liz Sandals: So if you can agree on the facts, you've got a better chance of negotiating the outcome.

Mr. Rod Seiling: Exactly.

Mrs. Liz Sandals: If we could turn to the issue of drugs. You're involved, through the Canadian Pari-Mutuel Agency, with the equine drug control program. You're also part of the Equine Medication Control and Drug Task Force, I take it? I notice that we've got a group coming this afternoon that I actually haven't run into before, the Standardbred Horse Owners Panel, which I take it is quite interested in drug issues.

You've also included for us a news article about a change in the rules for penalties when owners—well, trainers, I suppose, directly—are caught drugging horses. I wonder if you could tell us about that work and, in particular, what has changed about the penalties and how you hope that will provide better control.

Mr. Rod Seiling: I'm going to turn it over to Mr. Blakney because most of this is under the administrative side, but I do want to, first of all, say that the vast majority of licensees obey the rules. Those who are offenders are a very small minority and it's getting smaller because of the efforts that we've made.

One of the initiatives—and it goes back to Mr. McNeely's question about being best in class. Through the good work of Mr. Blakney and his team, this commission started out a competition-testing program, working in conjunction with the Canadian Pari-Mutuel Agency, but taking the level of testing to a much higher degree and targeting the new designer-type drugs that the federal body just wasn't set up to deal with. It's gone a long way to improving the perceptions and integrity of horse racing in this province. It actually goes back to—I made the comment to Mr. Kormos earlier—why, anecdotally at least, people are returning more to betting on Ontario races, because of their perception of the improved level of integrity of our races on a daily basis. But I'm going to turn it over to Mr. Blakney, because it's much more detailed than that, but that's at the 30,000-foot level.

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Mr. John Blakney: Historically, the Ontario Racing Commission has always worked very closely with the Canadian Pari-Mutuel Agency. Under the Criminal Code, it's that agency that's responsible for penalties or violations with respect to declaring positive tests that are related to post-race testing. So when a horse, for example, races and is chosen by the judges to be tested, then it's under the Pari-Mutuel Agency program that that horse is tested. They have a program. They have a research lab. They have a lab for testing located in Vancouver which

does all the testing across Canada. When a post-race test is declared positive, the provincial agency is responsible for enforcing. So we have to have rules, in terms of violations, where there are positive tests for prohibited drugs. We work with the Canadian Pari-Mutuel Agency just to ensure the post-race program is effective and operates properly.

About two years ago, or a little bit more than that, in Ontario there were observations that were causing great concern on the part of the wagerer, the owners of horses and the trainers. I go back to what Chair Seiling said, that one thing we have to keep in mind is that by far the majority—and we're into the ninety-some per cent level—abide by, have a passion for racing or are involved in this, trying to make a business out of it, trying to ensure that there is a fair playing field, and they do comply with the rules of racing. There's that small percentage, of course, in all jurisdictions that wants to push the envelope in terms of changing the balance of that fair playing field.

Two and a half years ago or so there were observations of, and I was receiving a lot of complaints about, abnormal performances of horses, anecdotal information about drugging and so on. I would say it was reaching, because we didn't know if it was real or not—the perception of the problem was getting to the point where we had to act. What I did was bring together a number of influentials from the industry who I believed could provide me with appropriate guidance in terms of, how do we address this issue? Because we have our post-race testing issue program that's ongoing, but it's not detecting, and it's not being successful in terms of addressing some of these concerns that industry participants had.

The Chair (Mrs. Julia Munro): We must move on, and we'll pick that up in the next round, perhaps. We'll go to Ms. MacLeod.

Ms. Lisa MacLeod: I'll be splitting my time with my colleague, Tim Hudak.

Just a quick comment and then two very quick questions; it all centres around what Mr. Kormos, and I quite agree with him, calls the viability of horse racing. The comment is: What may be happening in Belleville and what is happening in Fort Erie with respect to the slots when there is no racing—I find it is very difficult for me to understand why the ORC is not being more aggressive on that, because it is the viability of the industry. The slot monies were put in place to protect the industry and, to use Mr. Kormos' words, the viability of the horse racing industry. If there is no racing in 2009 but the slots are opening in Belleville, and there is no racing in Fort Erie but the slots are operating, that is a real problem and a real concern for me, and I think it's one the government ought to be addressing and one I think the ORC should be more aggressive on.

But I would like just to shift a little bit of my focus and reference the Sadinsky report in the guise of your setting and implementing policy direction. Like Mr. McNeely, the Rideau Carleton Raceway is now within my boundaries—it used to be within his—and over a 10-

year period it is undisputed that that racetrack is doing quite well and that it appears that race days have increased. The challenge, though, having gone to the Rideau Carleton Raceway several times, not only for a tour, but it's also quite a centre of activity in our community—and they're a good community participant, they're a great partner, but they do have a deep concern that was identified by the Sadinsky report which suggests there are racetrack market problems with its close proximity to not only the Quebec border, where we have a casino in the national capital region in Gatineau; we are also in close proximity to the United States border, the Gananoque charity casino as well as racing in the province of Quebec. They've identified that as a real challenge, one that could be a challenge in the future, and I'm wondering—I understand that some of those issues are with respect to gaming—is there any movement at the ORC on some of the recommendations that Mr. Sadinsky has made?

Mr. Rod Seiling: Let's go back. We'll deal with the first part of your question first. The issues that relate to competition for Rideau Carleton we're certainly aware of, and I'm sure everyone is, including the government. That's a fact of life that we all deal with: Whatever business we're in, we have competitive pressures. Certainly, in our reporting, people are made aware of what those pressures are and what the market conditions are. We don't have any ability to deal with that at all. Our powers relate directly to horse racing, period.

In terms of the Sadinsky report, the government commissioned the report. The commission has taken it at arm's length and not offered opinions. We provided information and acted as a resource to Mr. Sadinsky and his panel because it was the industry's report, not the commission's, and we are waiting for the government to decide whatever it wants to do with that report. It's not up to us. Government sets policy, we implement it, and so we are awaiting whatever decision they will make with that report and what, if anything, they want to bring forward.

Ms. Lisa MacLeod: Have you had any communication with the government since that report was released?

Mr. Rod Seiling: Certainly we've talked to them and said that—again, not anything different than what I've just told you. It's a report commissioned by the minister of the day. That minister received a report, and so our communication is that you'll make your decisions. If you need any information from us, we'll provide it to you, and whatever you decide to do, we will implement.

Ms. Lisa MacLeod: Thanks. This is just purely a comment to the government: I think it's an awful waste to shelve that report. We as legislators, but also the industry, deserve some recognition of the recommendations and we deserve to know what the timeline is for implementation of the recommendations.

Just finally, another issue with Rideau Carleton Raceway that I've become aware of, having met with Warren Armstrong, who runs the racetrack: It does seem

to me that there's an awful lot of—and this would be more in the operational side with OLG as well as AGCO, in terms of duplication of services and an awful lot of red tape, which I think, in my humble opinion, the ORC could help streamline and have an opinion on. I realize you don't have that right now, but I think there is an opportunity for the ORC to assist these racetracks in simplifying the bureaucratic processes that they have to undergo.

I'll leave that—I'm not sure how much time we have on the clock for Mr. Hudak?

1130

The Chair (Mrs. Julia Munro): We have four minutes.

Mr. Tim Hudak: I thank my colleague Ms. MacLeod. Just some quick questions: How many racing days occurred at the Baymount track in Belleville in 2008?

Mr. Rod Seiling: They haven't been racing. The track closed. I'll turn it over to John—

Mr. Tim Hudak: No, that's fine; that's the simple question. How long have the slots been inactive there?

Mr. Rod Seiling: There are no slots active there. It's a brand new build. If you haven't been there, the old track, part of the agricultural society, was just off the main drag in Belleville, and it had a lot of issues in terms of safety for participants and horsemen.

Mr. Tim Hudak: When will the slot facility be up and running?

Mr. Rod Seiling: It's our understanding that it will be late 2009, with the track opening in 2010.

Mr. Tim Hudak: The slots will be operating in 2009—

Mr. Rod Seiling: Late, yes.

Mr. Tim Hudak: —and races will occur in 2010.

Mr. Rod Seiling: Yes, that's the commitment.

Mr. Tim Hudak: Okay. So they will be running a year of slots without the benefit of the horse racing industry?

Mr. Rod Seiling: Not a year.

Mr. John Blakney: I think it's more in the vicinity of nine months.

Mr. Tim Hudak: What happens to the 20% of the revenue that would normally go to the track and to the purses in those nine months?

Mr. John Blakney: I don't have any knowledge of the site-holder's agreement.

Mr. Tim Hudak: But you follow the money. I mean, you follow how much revenue comes in, how much goes to purses and how much goes to track.

Mr. John Blakney: Yes, but we haven't received anything in terms of—

Mr. Tim Hudak: But your expectation would be that the 20% for those nine months would be set aside—

Mr. John Blakney: If it follows the existing program.

Mr. Tim Hudak: Is there any reason to believe to the contrary?

Mr. John Blakney: No.

Mr. Tim Hudak: Okay. The point I was trying to make is that the goal of this program, which many of us

here on the committee were involved with, was to ensure that the slot program would benefit the horse racing industry, not only to ensure its survival but to cause it to be a more vigorous industry. I think for a good period of time, that was a tremendous success, and remains that way for many of the tracks. Obviously, as you know with the questions Mr. Kormos and I have asked, and my colleague Ms. MacLeod, we're very concerned about the Fort Erie Race Track.

We want to keep an eye as well on what's happening in Belleville to ensure that the integrity of the program is maintained, as was mentioned in your mandate: ensuring the integrity of the racing industry. Knowing you gentlemen, your staff and your commitment to the horse racing industry, I suspect there are things that you would be saying behind the scenes that you may not want to share with the committee—and I understand that. So I would ask that you advocate to the best of your ability to ensure that the integrity of the slots-at-racetracks program is maintained—no horses, no slots—and if we need to make some change in the system to ensure the viability of the Fort Erie Race Track, I'd ask you to advocate for that and, secondly, to make sure that when Belleville does open, the 20% at a minimum is set aside for the stakeholders in the sector.

Is there any time left?

The Chair (Mrs. Julia Munro): A moment or two.

Mr. Tim Hudak: Just one quick question: What's been the impact on the horse population at the Fort Erie Race Track, given the uncertainty of the last couple of years?

Mr. Rob Seiling: The stall applications are down from what they were before, but again, looking at cause and effect, nothing is ever that simple, because you've had a new racetrack open up across the water—not in Buffalo, but not that far away—so you've added supply. That's a natural occurrence. If life had gone on and Fort Erie was booming, you would have had a natural migration of some horses anyway, at least for a certain period of time. They're just gone because the grass always looks greener on the other side.

Mr. Tim Hudak: Thank you, Mr. Seiling. I'll just direct my last comments to my colleagues across the way. I think part of the importance of integrity in the horse racing industry is the integrity of the government operators in the Ontario Lottery and Gaming Corp. I know my colleagues opposite, some who have tracks in their ridings or close by, will advocate to make sure the government operates at full integrity to ensure that they're not going to profit from slots if they're closing down horse racing dates.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move to Mr. Kormos.

Mr. Peter Kormos: Not unremarkably, I'm wrapping up with Sadinsky as well. You and I have been talking about being responsible for the economic stature or sustainability. I state implicitly; you say, "No, of course not," and as it is, Sadinsky suggests that by default you've fallen into that position with the disassemble-

ment of OHRIA, and that the proposal for a Horse Racing Ontario, which would give them the responsibility for race dates, for instance, would restore you to the position of the pure regulator of integrity. I think that's an interesting observation.

The other thing we have to refer to, and Ray McLellan has provided this for us, some research he's done, is the Econometric Research report. You know that one, 2005, prepared for the Ontario government. It suggested that slots on tracks may not bode well for live horse racing, to the extent that they interfere with the core business of the industry. Some negative trends are beginning to emerge. This includes the decline of nominal and real wagering on live races.

Then we have the other strong recommendation of Sadinsky, which is that there be a cohesive gaming strategy developed for the province of Ontario. Again, you've been very careful—and far more political than I could ever be—in not speaking bluntly about that.

Mrs. Liz Sandals: Yeah, right.

Mr. Peter Kormos: But I think all of us share the observation that this disconnect between OLG—slots, casino locations—and whoever it is that's going to regulate the economic viability of the horse racing industry has been problematic. There isn't much interaction and there isn't much consultation. Sadinsky also talks about the very sorts of things that Mr. Hudak, Ms. MacLeod and I have been talking about, and that is measuring or metering the amount of slots to ensure that it reflects the real cost of subsidizing that track. Look, Fort Erie has enjoyed great revenues from the slots, the city of Fort Erie; the government has. Mr. Hudak, I think, made reference to how the government is doing. The government always does well.

Mr. Tim Hudak: It's over a billion.

Mr. Peter Kormos: It's like the guy at the poker game who takes the rake. If that game lasts long enough, he'll have everybody's money without having to bet a penny. So the government's in that unique position, and the problem is that governments have become increasingly dependent upon those revenues. I have confidence in your ability to counsel this government to make sure it does the right thing to keep Fort Erie alive, but I feel a sense of urgency.

Mr. Rod Seiling: Thank you, Mr. Kormos, for your confidence. I would make one comment about the success of the slots-at-racetracks program, and just very quickly. The total number of race dates: 1,200 over 1,600; the total number of people employed: 24,500, which is an increase over 13,600 since 1997, and that includes 9,500 full-time jobs. So there are lots of success stories. With that success, there are some bumps right now, but I don't think it's fair to point all the blame at the slots program. There are a lot of other factors that have entered in to create these problems within specific areas, and it's no secret: they're border-related. The tracks aren't immune to those because they were built there for a reason. They were built because there was a great customer base right across that river, in both cases we're

talking about. You know the reasons better than I do why that base doesn't come across that border anymore and is not likely to come across in the foreseeable future.

Mr. Peter Kormos: What some of us are saying, though, is that the slots' presence on racetracks as compared to in casinos should be there for the bona fide purpose of supporting that racetrack and not as a yet-extra source of revenue for any number of parties, including the government.

Mr. Rod Seiling: That's something that we have no control over.

Mr. Peter Kormos: But you know Sadinsky commented on it, and you will be consulted by the government if and when it ever decides to come to the aid of Fort Erie and if and when it ever decides to develop a gaming strategy.

Mr. Rod Seiling: As I said, I'm an optimist.

Mr. Peter Kormos: Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. Mrs. Van Bommel?

Mrs. Maria Van Bommel: Thank you, Chair.

You talked earlier about the Belleville raceway and the issues of safety, so you closed it down and it is now rebuilding itself. In your work with the raceways, how do you ensure the safety of the horses?

Mr. Rod Seiling: I'm going to turn that over to Mr. Blakney, but from a policy perspective, there is a whole range of things that the board does and directs the administration to do, from the recent introduction of safety lines and to—

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Mr. Peter Kormos: Has Michael Phelps been banned from our racetracks?

Mr. Rod Seiling: But there are very specific matters that the administration does, in terms of the racetrack program, the surface and all those things. I'll turn it over to Mr. Blakney because he can deal with them. That's what their responsibility is, or one of them.

Mr. John Blakney: The Ontario Racing Commission folks, as I was indicating earlier on the medication areas, I think are leading in terms of meeting the challenges in those particular areas. Of course, that not only goes to the integrity of racing but also the protection and welfare of the horse. In terms of drug abuse and so on, we have some very strong programs, in my opinion, to tackle the challenging issues in the future.

Other areas that we continue to focus on are the condition of the racetrack surfaces. The board itself has established some minimum standards, which were really, as I recall, the first attempts to establish minimum standards for track surfaces. Those are being implemented. Certainly, we have areas of concern in terms of the ongoing condition of track surfaces, their design and the maintenance of the tracks. We engaged a consultant a number of years ago to look at the operations of the systems for the management of racetrack surfaces, and he provided some fairly specific recommendations. We continue to try to provide resources to the racetracks, people who are on site at the tracks and whose job it is to

maintain the tracks on an ongoing basis. We have educational programs. We bring them together. We try to provide them with the best advice and bring the best people together to support racetrack surfaces.

We are, of course, subject to ongoing weather issues. Also, in terms of management decisions, how a particular track is managed may cause difficulties, so we have a cancellation on-track committee program for making determinations as to when it's unsafe for horses to race. Normally it's left up to the horsemen who are racing to decide what the conditions are.

We're instituting now—in the last year especially, we've been getting greater focus on more detail in terms of the backstretches. We've required backstretch improvement plans and so on for some time. We require the tracks to meet those under conditions of licence. But we're even going to a higher level of detail of looking at some of those areas: conditions of parking lots, for example; conditions of barns or stabling, paddocks and so on—things that need to be done that, hopefully, will protect the horse in the long run, and also the participants who are involved. We have a number of ongoing programs that do look at the conditions of the track itself and the backstretch, for the welfare of the horses.

Interjection.

Mr. John Blakney: Rod is saying—sorry?

Mr. Rod Seiling: Two other things we just did, as part of our omnibus package: We're requiring horse people to only use an ORC-licensed vet. The reason we did that is because there are rules that are specific to horse racing and what you can treat a horse with and what you can't, and we wanted to make sure that only licensed professionals who know the rules treat our athletes.

The other is that we are compelling trainers to have a record of all horse medications. That record will now become portable and travels with the horse. What we became aware of is that, for example, a horse can be sold or change hands a number of times over the course of a year, and trainers could quite easily be giving a horse what they think are his annual vaccinations, and this horse could be getting over-vaccinated because they wouldn't know what the previous owner did, or two owners past, and that could become a health problem for horses. So we wanted to ensure that horses were treated as a human—that you had a record, and that, because they are athletes and they're competing, we want to make sure they're in the best health possible.

Mr. John Blakney: If I could add two more points. One is that, about five years ago or more, there was significant concern over claiming events and the number of horses that were being claimed. Then there was a turn-over of an individual horse that was too quick and not in the interest and not to the welfare of the horse, so the racing commission took action to take steps with respect to affecting the reduction of claiming, in the interest of the welfare of the horse.

The last thing is that the board of the commission is already taking action on the thoroughbred and standard-bred side and under the quarter horse plan. There are

efforts to ensure that some resources are made available for retired racehorses, with thoroughbred, quarter horse and standardbred, to ensure that there are funds available for that extension.

I think one of the more important areas—and I mentioned, on the international side, the whole area of equine research and drug use, the types of drugs that are on the market and the challenges moving into the future on some of the protein ones. A lot of the work that we're doing in terms of knowing more about the horse, the impact of racing and so on, and the impact of service and so on, are areas that are part of the equine research that we're encouraging through the horse improvement program.

It's a great effort that Equine Guelph has put together in terms of encouraging research to the benefit of the horse and the welfare of the horse, because it really represents a joint effort between the regulator, who—in this case, it's program money from the horse improvement program, the quarter horse program, that's supported by the slot program in many ways, and parimutuel wager, but also the horsemen's association and their support for it. So it's one of those joint efforts that's being made in terms of encouraging top-notch research.

The Chair (Mrs. Julia Munro): Thank you very much. I believe that we've completed our time. I want to thank you for coming here today and thank everyone for their attention and contribution.

Mr. Rod Seiling: And thank you for the opportunity to be here.

Mr. Peter Kormos: Thank you, gentlemen.

The Chair (Mrs. Julia Munro): That concludes our presentation for this morning. I would ask members of the committee to stay for a brief in-camera meeting.

We are adjourned now until 1 p.m.

The committee recessed from 1149 to 1302.

The Chair (Mrs. Julia Munro): Good afternoon. Welcome to the afternoon session of the Standing Committee on Government Agencies.

ONTARIO HARNESS HORSE ASSOCIATION

The Chair (Mrs. Julia Munro): I'm pleased to have as our first presentation the Ontario Harness Horse Association, and Mr. Bill O'Donnell, president. I would just say that for the purposes of Hansard, please introduce the person you have with you.

Mr. William O'Donnell: I am Bill O'Donnell, president of OHHA. First, I'd like to thank you for inviting us. Our first vice-president is Darryl MacArthur, and he's going to be making the presentation.

The Chair (Mrs. Julia Munro): Thank you. As you may know, you have 30 minutes, and any time that remains from your presentation will be used by the caucus members.

Mr. Darryl MacArthur: Ideally, we'll be through this document in under 20 minutes, and then that will leave us 10 minutes to have some questions and answers,

which I think would definitely be of benefit to everybody here today.

First and foremost, we're from the Ontario Harness Horse Association. We represent standardbred harness people in Ontario. We're the largest horsemen's representative in the province. We thank you for having us here today.

We're looking for some perspective on the regulation of horse racing in Ontario. We'd like to identify some key areas of concern and also provide some recommendations at the end of all this. Ideally, we're looking to seek some alignment in taking the first steps to improve the harness racing industry as a whole in Ontario.

About us: We were formed in 1961. Currently, there are 4,000-plus members and these are direct members. If we extrapolate past that to family members who are included in that group, we actually represent the opinions and visions of over 12,000 people. Again, it's back four decades. Our responsibilities during that time have changed and evolved. Currently, our main ones are negotiating purses with racetracks—that's key; racing conditions; industry matters; slot agreements; management and disbursements of revenues from purse pools; and the management of OHHA benefits such as the RSP programs, health and dental benefits and benevolence programs.

We also are involved in building the profile of the standardbred racing industry. Such things as the Ontario Sires Stakes program have been very successful; race dates from OHHA where we go to the tracks to provide events and functions to attract families to the racetracks; media days. One of the most successful programs that has been instituted is the youth camps. We go to several racetracks throughout the province and invite children who have not been exposed to the industry, for the most part, to bring their families, and expose them to what a wonderful sport we have. Finally, as a liaison to the racetracks and various quasi-judicial and legislative bodies: the CPMA, the ORC, and Standardbred Canada.

The Racing Commission Act allowed the ORC to become self-funding in 2000. At that time, the regulatory framework changed. The ORC now can set its own fines independent of government consultation. The administrative infrastructure that was put in place is also self-funding. So the roles and responsibility are dictated based on growth in the workload and the expanded scope of the job that they currently do. The revenue comes from a track levy, which is a fixed percentage of wagering, and the fees and fines. That's set at the ORC's discretion. A very conservative estimate on the budget growth has been an increase of approximately \$6.5 million over nine years.

Some of the critical facts: We have concerns that there is no long-term vision that's evident for the harness racing industry itself: the ORC rule-making processes, how those decisions come about and where inputs come in and how they're dealt with; race date determinations—again, we keep hearing about race dates as an issue for horse people, and they truly are some of the concerns we

have; track accountability; and potential unfair track practices.

Overall, what is the economic impact to the Ontario racing industry?

First and foremost, no long-term vision for the industry: Currently, there does not appear to be any cohesion in regard to a long-term vision for where we are going in Ontario with the standardbred racing industry. We see the ORC as paramount in being involved in that process and we do feel that, as the regulator, they're integral in any piece or part of that process as we move forward.

We have concerns in areas that we feel need to be addressed. It has to do with the isolation of facts or industry alignment. The ORC has been tasked with evaluating business plans for tracks and application of race dates without any standardized measurements in place. The decision-making process for economic impacts is lacking any benchmarks. On a go-forward, we would like to say, "This is where we're starting from as we move forward. How are these changes going to affect those benchmarks?"

Backstretch improvement requirements are in place, but there is no compliance or accountability, so each racetrack is required to meet a certain standard, and we struggle annually in reaching those goals. We feel that's something that could be more strongly addressed. The concern is that decisions made in isolation are having a devastating effect on the long-term viability of our industry.

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Point two, the ORC rule-making process: The ORC has, in the past, implemented rules that may not be supported by the industry as a whole. We're asking for a clear and open process to discuss and implement any changes to the rules, policies and directives; a consistent set of rules and a transparent process that would ensure that rule violations and penalties are very clear to all; that would ensure that all ORC employees are accountable for any actions; that would leverage committees that have been formed to discuss rules and align on decisions; and that would ensure that people who volunteer for committees are treated with respect, and that their voice and experience provides weight to decision-making processes. This is something where over the past few years there have been concerns. While we have been invited to committees and opinions have been offered, when the rules that have been effected come down, the appearance is that a lot of the investment made by members of the industry has not received the proper weighting and consideration.

Basically, we have the decision-making process as a graph, and we don't need to go through this. It does highlight a few points where there are some concerns from the Ontario Harness Horse Association in regard to how that process works and where we feel there could be some adjustments or considerations made. What we're ideally seeking is the need for quality, fair, unbiased sup-

port in decision-making that promotes the overall objective of harness racing's economic growth.

Over to race dates: The ORC has granted permission to reduce race dates without sufficient disclosure by racetracks to support those reductions. The ORC has allowed consolidation of total race dates into a shorter racing season at times. There was some discussion earlier in regard to Georgian Downs and how they had shifted some race dates from the winter months into a later fall session. That does impact horse people. There's only so much ability to race a horse and times to race, and decisions are made from investment standpoints. Historically, Georgian Downs has raced year-round, and we had submissions from people who were at the hearings who validated the point that investments were made in horses that they had intended to race in the spring of the year. They did take those points into consideration. Unfortunately, at the end of the day those changes were allowed to be made.

There was some concern with the language in regard to race dates added to WEG's circuit because of those changes. In effect, two previous years, WEG had raced, approved, for 260 days. The year following, they had reduced those dates to 235 days. So when they've talked about adding race dates back, they went from 260 to 235 and then added eight days to that 235 number. In essence, there were no days truly added. There were dates put back on the table that had previously been removed.

The other concerning point about that situation was, following the submission from Georgian to change that, and to backload those race dates into the fall, that Woodbine Entertainment Group themselves sent a letter to the ORC with concerns that allowing them to do that would in effect challenge them in regard to a horse population, or a horse shortage. There definitely were some concerns there that perhaps all of the players at the table should have been involved in an official capacity to say, "Okay, this is what we're planning on doing, and how is everybody going to be affected?"

It was brought to our attention that there was a meeting that did take place between WEG, the Woodbine Entertainment Group, and the Georgian Downs group prior to those submissions being put forth with the administration at the ORC. This is not standard practice. The horsemen were not invited to that meeting. Unfortunately, the fallout at the end of that was that these changes were made. We were informed of them and a date to come to the hearing. We just felt that, if all participants had been brought to the table, perhaps this unfortunate set of circumstances wouldn't have occurred.

The changes we're looking at: We're looking for the racetracks that benefit from tax breaks and the slots-at-racetracks program to continue to act in the best interests of those programs and to fulfill the mandate, which was to support and promote live racing in the province of Ontario. There's a quote from the actual Site Holder Facilities Agreement which states: "The slot program at racetracks is intended to promote live harness racing in the province and subsequently benefit the agricultural

sector in Ontario and the OLG supports this endeavour." Ideally, we're asking for everybody to continue to look back to that point and remember that this is about live horse racing in Ontario. First and foremost, if it can't be about live racing, then why are we all here? There are just some numbers here to suggest how there have been some changes from 1999 to 2008. These are three of the prominent tracks in the province. As you can see, we've had race date reduction, the most dramatic occurring at Windsor Raceway, which in 1999 raced 193 dates and in 2008 was down to 111. This is obviously contrary to the public policy, and we're needing support to build live harness racing products.

Over to the next page: We've discussed a lot of these different points. There were no data collected or offered that would suggest what the economic impact would be of fewer race dates, or the shorter season in the Georgian Downs case. There is no performance standard or benchmark in the performance of these racetracks. When they do change dates—and by "change" we mean reduce dates—what exactly is happening with the economics of the situation? The reduction of dates does impact the track's bottom line, and it also has a tremendous impact on the economics of all people participating at the track, as a couple of members have previously stated. If you cannot race your horses, it's difficult to make revenue, and the sole way horse people do make revenue is through the racing of racehorses. Any time that we lose those opportunities, it's a burden on the horse people, absolutely. Change with a positive impact for all sectors of the racing industry is what we're looking for here, something that's very desirable.

The agricultural impact: Most people are surprised to hear the numbers because they are substantial. In Ontario alone, the multiplier effect of the horse racing industry is approximately \$2.6 billion per year in estimated revenues. Horse racing is considered the number three agricultural sector in all of Canada, based on revenue. Horse racing is very labour intensive, and normally it's in areas where there are limited employment opportunities, so a lot of these jobs do happen in rural areas, where there are not large factories, where there are not other large employment opportunities. People who race and compete with their horses generate a lot of opportunity to spill out past the people that work with the horses. There's the person who supplies the feed; there's the blacksmith; there's the tack person; there's the person who sells the trucks and services the trailers. It starts at the top with the horse people but it branches out well past that, into the economy of the general area.

From an investment standpoint, it's approximately three to four years before an investment made in the front end turns into an actual, potentially viable racehorse, and these are decisions that need to be made today. Ideally, I need to know that four years from now I'm going to have the ability to race my horse. The concern is that, under current practices, the reduction of race dates is an ongoing concern that we feel needs to be addressed. From the slot revenues, 4,100 jobs have been added to the rural

economy, with an estimated annual payroll of \$154 million. This shows a direct impact that does generate down to the agricultural sector from slots.

Aside from just the economic impact, there are hundreds of thousands of acres of green space that is also maintained because of horse racing. These are areas, especially in the times when we talk of going green and being environmentally responsible, that horse racing and its related activities do keep open and available for generations to come.

In Ontario—this is information that came directly from an ORC pamphlet, “A Fair Chance at the Races”—there are 65,000 jobs associated with horse racing; those would be direct and indirect jobs. As we can see, there’s a small graph here. We don’t need to go into it. It pretty much demonstrates how the purse structure works and how the monies do filter down through the racing economy, with all different sectors and all different segments receiving shares, of which most importantly, at the top of the page, is the actual race itself. Again, it’s that live race date that allows this economic engine to run. Simulcast races that local horse people are not able to participate in do not provide that same stimulus.

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On to point four, track accountability: Currently, there are benchmarks of accountability to invest and continually improve live racing. The problem is that these measures are invisible within the system. At some race-tracks—you will find if you go regularly—there has been limited capital reinvestment into the facilities for the racing participants. Frequently, on the slots side, where the patrons come in to participate in slots, in every race-track they’ve done a great job. Unfortunately, in the areas where a lot of the horse people spend their day, the same investment has not been made. That’s a concern that we have and that’s why we’re looking for a change. With the OLG slot agreement, there’s a formal requirement of on-site racing investment to continually improve the sport.

We feel that the ORC, in essence, in that case, are the ones who are supposed to be on the forefront and be the watchdog for these initiatives. We hear at times that because they’re not party to the slot agreements and they’re not party to the deals themselves, it’s difficult for them to enter into any sort of discussion on that point. We’ve heard it today: Several times questions were asked and they deferred, simply because that was not part of their scope or mandate. So we’re considering that’s something that should be looked at and considered, for sure.

We’re also asking that the OLG be accountable to these agreement requirements that are in place in all of these different documents. Let’s recognize that the slot agreement was developed to promote and invest in the industry for a positive overall economic impact.

So what do we have that needs to be changed? The ORC is the body that’s actually making the decisions when benchmarks and accountability remain invisible in the system. To some of the points I discussed, it’s the ORC and not actually the OLG that engages in the

business plan review. The ORC is not party to that slot agreement. They have no mandate to address deficiencies and execution in those plans, and there is actually no relationship between the slot agreement and racing days. That’s something that I believe the entire industry struggles with and, on a go-forward, we feel strongly should be readdressed. Again, the slot programs were developed to promote live harness racing in the province of Ontario.

The final point is potential unfair track policies. Currently, there is no track accountability support to the overall objective of Ontario harness racing’s economic growth. Some of the areas where we feel there should be some change:

- tracks trying to reduce overhead costs by offering fewer race dates or shorter racing seasons;

- tracks not fulfilling racing obligations in regards to dates that they have contractually obligated themselves into, and then continuing to go back to the regulator asking for reductions of those race dates;

- some tracks asking horsemen to pay a large percentage or take less commission off of the wagers that have been made. In essence, it transfers revenue from horse people to the racetracks;

- limited capital reinvestment at some facilities; and

- some tracks not investing in marketing and publicity, and as we know, we are an entertainment business and that’s paramount to letting people know exactly what’s going on.

In our estimation, there is a requirement for greater investment, and we’re looking for a commitment from the industry to honour agreements and hold all parties accountable to those agreements.

What do we need to drive economic growth? We’re looking for a long-term business plan that all parties align on. We feel that the ORC, in its position as a regulator, could be and should be a point of interest to move forward on with that. We’re looking to stop all decisions that would impact harness racing until the right due diligence is performed. That’s anything from race dates to rule changes—rule changes in regards to safety lines or whipping rules, or the claiming rule, which was discussed earlier. That is a rule that used to be that claiming horses—these are horses that when they were entered into a race were for sale. Any horse that was put in that race had a price tag posted on him and any person with a licence could buy that horse after the race. It was not a haggle. If the horse was in, you could buy him. They changed the rules to discourage the frequent claiming of horses.

Unfortunately, there was no economic impact study done before that change was made and, in essence, what happened was that an entire segment of our industry, Woodbine Entertainment Group, a very prevalent part of the industry, pretty much changed overnight. Now we’ve gone from having several races every week and every card for high-priced claiming horses, which handicappers do like to wager on, to last year, I believe, perhaps one or two of those races that ran the entire year because of

those changes that were made. I understand the optics of it. It was to try to benefit—they felt that certain horses, perhaps, were being traded through barns too frequently. We feel that could have been addressed in a different manner. Unfortunately, what has happened is that the handle was affected, the economics of the industry were affected by that, and that is definitely something that, as an industry, there was not a cohesiveness on, and individuals from the horse racing side were certainly not in support of that change.

We're looking for third-party immediate evaluation of the economic impact of fewer race dates and a shorter season business model. Let's have somebody look at what this ultimately is going to boil down to. We're looking for transparent decision-making with economic impact tabled and aligned with each decision, annual audits of decisions to ensure accountability by each decision-making party and, ideally, we're going to have collaboration of the OLG, the ORC, OHHA, CPMA, WEG and other key industry leaders to ensure decisions are transparent and potential economic impacts are understood.

So in closing, our ask: We immediately encourage the ORC to fulfill its mandate as the sole provincial regulator of horse racing; we're asking that the ORC ensures to protect the integrity of the original slot site-holder agreements—in essence, that it maintains the live Ontario race dates and maintains current harness racing seasons.

Finally, our goal: The ORC, having gained the support of all industry participants, has a mandate and tools to effectively regulate the public interest while upholding the principles of honesty, integrity and social responsibility. The result of that would be an increase in confidence in the policies and practices of the ORC by all industry stakeholders.

I thank you for your time.

The Chair (Mrs. Julia Munro): Thank you. The time left, I think, makes it more practical if we just hear from one caucus, and that would be Mr. Kormos.

Mr. Peter Kormos: Thank you, Chair.

The Chair (Mrs. Julia Munro): You have about four minutes, five minutes.

Mr. Peter Kormos: Look, Mr. Hudak, from down Niagara way, and I are incredibly concerned because of the immediacy of the loss of almost 300 jobs, give or take, so far at the Fort Erie Race Track; it's 111 years old. I'm going to be a little blunter than you were and straightforward about the kind of jobs people can get on racetracks. Although the skill sets range from A to Z, there are a whole lot of jobs in the horse industry and on racetracks that are highly skilled, but the skills aren't acquired in the traditional academic streams. I'm being very politically correct now. But they're wonderful people. I've known a whole lot of them and continue to know them. They're not people who are very likely going to be readily retrained for Mr. Florida's creative economy.

Ms. Lisa MacLeod: It's the creative age.

Mr. Peter Kormos: The only thing that was creative was Mr. Martin and Mr. Florida on that \$2.2-million report. It should have been tabled under fiction, not fact.

In any event, you seem to be saying a whole lot of the same things the Sadinsky report said: single gaming strategy, eliminate the isolation between the Ontario Lottery and Gaming Corp. and whoever it is that's regulating the economic interests of live horse racing. You and your folks have read Sadinsky?

Mr. Darryl MacArthur: Yes.

Mr. Peter Kormos: You're close; right? Do you by and large endorse its recommendations?

Mr. Darryl MacArthur: I would say the Sadinsky report, as we know, is very broad in its scope, and there are going to be certain areas where there are going to be more challenges. We do feel there are areas that could be implemented sooner rather than later. Our concern overall is that that report does not get lost in the shuffle and that it actually will continue to see the light of day and there will be some discussions on it.

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Mr. Peter Kormos: You want the government to move on it.

Mr. Darryl MacArthur: Absolutely, yes, and move on it with the consultation of the industry participants.

Mr. Peter Kormos: I'm going to cede the rest of my time to Ms. MacLeod.

The Chair (Mrs. Julia Munro): All right.

Ms. Lisa MacLeod: Thank you very much. It was actually us, the official opposition, who called you, so I appreciate that. It's very kind of you, Mr. Kormos.

I have just one comment and I'd like your views on it. Earlier today we obviously had the ORC in, who made the statement that the regulated don't necessarily like the regulator. We then got into the discussion of Belleville, and the OHHA has been very forthright in bringing that concern to our attention, that there would be slots running in Belleville without race days. Then we're finding out a little bit more from my colleagues in Fort Erie, from the Niagara region, both Mr. Hudak and Mr. Kormos, that the same issue may occur in that community. I'd like your opinion not only on that statement that the regulated don't like the regulator, but certainly in terms of the slot days that are occurring in two communities right now without race days.

Mr. Darryl MacArthur: Fort Erie is a thoroughbred initiative, and so to speak specifically to it—I'm going to speak to that from a horseman's perspective. We know that there's revenue generation happening, and a majority of that revenue does go to the province, and the municipality also receives revenues. Our concern is that what might happen there is if race dates are no longer offered, there is no live racing, those slots would continue to run—that they would be set aside. Perhaps the deal would change so that the track operators themselves would receive a smaller portion. But any change that involves no live racing means horsemen are left out in the cold. That would be a very dangerous precedent to set on a go-forward basis, because I think what would end up

happening is you would have several other track operators lining up to say, "We're having some economic challenges as well. Perhaps we can cut a deal like that."

The Belleville situation, from our standpoint, is a very unfortunate one. There were race dates applied for in 2007 that were granted; I believe it was in the order of 18 to 20. It's a very small regional track. Approved by the ORC, those races did not occur. To my knowledge, there have been no penalties or sanctions placed upon the track operator for the lack of those race dates actually occurring. The horse people were prepared to race; those races were not offered. On a go-forward, because of the slot deal that the owner has, with the intention of building the new racetrack—2007, no races; 2008, there were no races; and in 2009, there have been no race dates applied for. The conjecture is that 2010 is going to be the first year that those will actually occur—

Ms. Lisa MacLeod: I think that's consistent with what we heard this morning.

Mr. Darryl MacArthur: Well, if you followed it all and you read some of the unfortunate press that has happened, the feeling is now that that may not even happen, as well. Because of that slot deal—and the slots are tied to the track—there are other parties who would be interested in grabbing hold of that mantle and running forward with it. They cannot do that, unfortunately, because the slot deal has been bound to Baymount and they control it. So, in essence, whether they build or not, they control the history of racing and slots in the Belleville area.

Ms. Lisa MacLeod: To switch gears just a tad, and if you don't mind commenting on this: Earlier this morning, we heard from the ORC about some of the internal struggles within the racing community. In their business plan, they cite industry tensions: "Apparent discord in the racing community, primarily built on a lack of trust and competing business models, heightened political lobbying by factions within the industry and stagnant wagering have resulted in instability, dysfunction and an increasingly confrontational and litigious environment."

That's obviously a very big concern if you're talking about the amount of jobs that are being invested into the province of Ontario—and where your sector is in the agricultural sector in this province. Is that a fair comment that has been made by the ORC?

Mr. Darryl MacArthur: I would say yes. We can be blunt. The racetracks have a different economic model that drives them than do horse people. Ideally, as horse people, we want to have one regulator in this province, and we feel that regulator should be the ORC. Unfortunately, the message from them to us is that there are certain areas, because they do not have a mandate to delve into—that they at times are restricted, that they cannot enter into those discussions with us. We have racetracks that set their own rules in regard to who can race and who cannot race there, which is a concern for us. I think the industry as a whole would strongly support and get behind a regulator if we honestly, honestly felt that they were the true regulator.

Ms. Lisa MacLeod: So do you think—

The Chair (Mrs. Julia Munro): Thank you. I'm sorry; I must cut you off.

We appreciate you coming and thank you very much for being here today.

RACETRACKS OF ONTARIO

The Chair (Mrs. Julia Munro): I'd like to call on the Hiawatha Horse Park and Entertainment Centre. Robert Locke? Good afternoon and welcome to the committee.

Mr. Robert Locke: Thank you. I'd also like to call upon Dr. Ted Clarke.

The Chair (Mrs. Julia Munro): Certainly. I'd make that available to you as we move along here.

Mr. Tim Hudak: Chair, can I interrupt just briefly on a point of order while the gentleman gets set up? OHHA's presentation represents what they would describe as a system malfunction, where the Ontario Lottery and Gaming Corp. enforces the slot agreements and the ORC has no mandate to ensure that money from the slots is helping to invest in the product at the racetracks. Could I ask, through you, Chair, if research could contact the OLG and see how that is remedied; what kind of mechanisms they have in place to ensure the agreement requirements are followed by the racetracks?

The Chair (Mrs. Julia Munro): Yes. I can certainly pursue that.

Mr. Tim Hudak: Terrific. Thank you.

The Chair (Mrs. Julia Munro): Welcome, gentlemen. For the purposes of Hansard, please identify yourselves. You have 30 minutes, and any time remaining then will be divided among members of the committee. Please begin when you're ready.

Mr. Robert Locke: My name is Robert Locke. I'm the general manager of Hiawatha Horse Park and Entertainment Centre. I also act as the chair of an association called Racetracks of Ontario. On behalf of Racetracks of Ontario, I would like to thank the chair and committee members for providing me with this opportunity to speak today.

Racetracks of Ontario is an umbrella association which represents all 18 racetracks in the province. Ontario racetracks are quite diverse in terms of size and ownership, from small seasonal tracks to large year-round operations. Track ownership ranges from privately owned operations, publicly traded companies, agricultural societies and not-for-profit organizations. The product line includes live standardbred, thoroughbred and quarter horse racing and simulcast racing from around the world. Ontario racetracks are partners with the Ontario government, through the Ontario Lottery and Gaming Corp. and the slots-at-racetracks program. It is critical to the longevity of our industry that it be recognized as an integral sport and gambling activity.

Horse racing is the oldest form of legalized gambling in Canada. Betting on horses is regulated and licensed by the Canadian Pari-Mutuel Agency, the CPMA. Racing and racing-related participants are regulated and licensed

by the Ontario Racing Commission, the ORC. In addition, racetrack owners and any staff dealing with OLG, or OLG customers, are subject to the stringent regulation and licensing by the Alcohol and Gaming Commission of Ontario as a result of the slots installations at racetracks. Racetracks of Ontario supports the role and need for each of these regulatory authorities; however, racetracks are smothered in regulation. Duplication of AGCO due diligence by the ORC is not a cost-effective or productive use of ORC resources or the resources of the government of Ontario. Licensing dishwashers at racetracks surely exceeds the requirements contemplated by the Racing Commission Act of 2000.

The OLG and Ontario's racetracks work together through the slots-at-racetracks program to promote live horse racing in the province. The program subsequently benefits the agricultural sector in Ontario through support to the horse racing industry. The benefits reaped by the province from live horse racing are many, including the stimulation of tourism, job creation and agricultural spending, not to mention substantial revenues through the related gaming facilities. In the long term, the racetracks contribute to community well-being and sustained rural economic development.

The border racetracks have not been meeting the revenue expectations of either the site holder or the Ontario Lottery and Gaming Corp. These racetracks have been victims of cannibalization by competing OLG gaming sites within the market catchment, as well as major US casinos being constructed and expanded over the last few years in their area. To overcome these major obstacles, there needs to be a right sizing of the product and improving the product mix to assist them in developing a program that would reinstate their competitiveness and viability. At the same time, there needs to be an understanding from the ORC that there isn't an indefinite flow of cash available from the racetracks, and definitely not from the US border racetracks.

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In the year ending March 31, 2002, the first under the new act, the revenue from the industry paid to the ORC was \$6.7 million. In 2003, the commission approached the Ontario Horse Racing Industry Association, OHRIA, to support a new \$4-million levy in order to implement its strategic plan. The basis for the request was that the additional slot income to the industry had created more work for the commission. The strategic plan, as presented to the industry, was to:

- enhance regulatory services provided by the commission, especially in the areas of investigations and enforcement;

- ensure effective and professional regulation through delivery of a comprehensive training program for commission staff;

- improve services to the public and enhance regulatory activities through infrastructure and information technology improvement.

The industry agreed to support the additional funding request. Due to the increased purses from the slot rev-

enues, it was deemed important to ensure that the races were of the highest integrity and conducted fairly.

Now, in January 2009, the ORC issued an RFP to seek an evaluation of the adjudicative procedures and to develop new training programs for staff. This seems extremely belated if this was part of their strategic plan seven years ago. This is welcome recognition of the deficits that plague the ORC in accomplishing its goals as set out in the second bullet above. However, in answering questions submitted by the respondents to this RFP, the ORC has stated that it is not the place of the training provider to either consult with or report findings to racetracks or horse people.

In a quote delivered to the Harness Tracks of America convention, which was just recently, Bill Eadington, an international gaming authority, stated that the ability of the horse racing industry to change its fortune is limited by the fact that “so many people have a stake in the status quo.” This statement is accurate both for the industry and the regulator.

Although the commission has increased its investigative staff from four in 1999 to 20 in 2008, rulings issued by judges—1.1 per race day in 1998 and 1.1 per race day in 2007—remain unchanged. Significant effort and resources have been directed to investigation while day-to-day adjudication obviously has fallen in importance. Racetracks of Ontario is pleased that effort is being directed toward the adjudicative function of the ORC. The product we present each day to wagering customers is often evaluated in terms of the decisions made by the judges or stewards. Racetracks of Ontario would support a more direct focus on the traditional roles of the judges and stewards of the ORC, recognizing the significance for more support to people employed in this front-line position.

Documents published on the ORC website refer to the ORC as being self-funded. Although it is true that the ORC has the right to set fees and recover costs, it is the industry that pays for the activities of the commission. Surely the associations and horse people could provide meaningful input and perspective to the supplier of this report mentioned above. It is a commonly held perception, if not a reality, that industry input which is directed to the ORC is often muted by differing and pre-established viewpoints from within. To be fair, the commission does seek industry input in many of its initiatives. Perhaps it is a lack of sophistication of the respondents or the traditional adversarial role of the commission in the eye of the respondents that leads to the limited uptake of suggestions.

Even though this regulatory levy continues, RoO is gravely concerned, as are other industry participants and customers, about the professionalism of the judges and stewards in their decision-making. Customers have expressed their frustration in industry trade magazines over the manner in which ORC judges are enforcing the rules.

ORC mandate: On its website, the ORC defines its mandate as “acts in the public interest to govern, direct, control and regulate the horse racing industry in Ontario

and to ensure public confidence in the honesty and integrity of the industry.”

In a press release dated June 24, 2008, the chair of the ORC pointed out that the ORC has a responsibility to protect the public interest, to govern, control and regulate in a socially responsible manner. The article further stated that the ORC operates on three guiding principles: ensuring the health of the horse, ensuring the safety of the participant and protecting the public interest.

Again, Racetracks of Ontario fully endorses those principles and is supportive of a strong, independent regulator. We are, however, extremely concerned that the commission is not fulfilling its current responsibilities effectively, yet it continues to expand its mandate.

A more direct focus on the traditional areas of regulation of horse racing and the application of the rules of racing is required. Focused attention to clarify the rules of racing, support and training to assist the judges and stewards to apply those rules, and narrowing the due-diligence efforts to eliminate duplication will bring immediate benefit to the industry and the commission. These are traditional areas of regulation that are essential to the industry. Stretching the hand of the commission into the commercial activities of participants, whether racetracks or horse people, should be limited to those areas that pertain directly to the conduct of horse racing.

We believe that it is not appropriate for the commission to become involved in matters of private property rights, issues involving private contractual matters or economic regulation. These matters have not historically been within the ORC’s jurisdiction, but a recent broader application of the “best interests of racing” has led to mandate creep on behalf of the commission.

It is also our view that the commission should not involve itself in private property matters. As the industry evolves and as the economics change to reflect external realities, racetracks and their various third party stakeholders must be allowed to negotiate without the ORC’s involvement. The economic viability of the industry and its racetracks is dependent upon a private contractual environment that reflects economic reality. The industry requires the agility and flexibility to respond to today’s dynamic marketplace.

Industry consultation: Recent policy directions and decisions of the commission have impinged upon the business responsibilities of the racetracks. Decisions of the board are often cited as being in the best interests of horse racing, often without further explanation. While the commission goes through the process of industry consultation, in fact there is very little consideration of the input provided.

Often, when a final policy is announced, there is little change from the original draft policy which was circulated. A recent example of this is the new standardized annual financial reporting requirements for racetracks. One of the proposed purposes of the information was to allow for comparisons between tracks. With the vast difference in size and scope of the racetracks, a generic comparison does not make sense. It has always been part

of the racetrack licence process to provide the commission with the track’s financial information, and we are quite willing to continue to do this.

It was also suggested that the information would be used to establish benchmarks, but during a consultation, there was no discussion about the purpose and type of benchmarks being proposed. Despite input and submissions from the racetracks adamantly opposing the draft policy, the final policy was virtually identical and has now been added as a condition of receiving our racing licences. This is not uncommon.

If there is no other way to refocus the Ontario Racing Commission, then an amendment to the act may be needed to more precisely define the role and purpose of the ORC as it relates to private property matters, private contractual matters and economic regulation. The focus of the commission on ensuring the integrity of the sport is wholly endorsed by my members and should be the sole mandate of the ORC. A strong and focused ORC will be a benefit to the viability of the entire industry.

The Chair (Mrs. Julia Munro): Thank you very much. We’ll begin, then, with Ms. Sandals.

Mrs. Liz Sandals: Yes, thank you very much. I appreciate you coming today. I’ve got about three things that I’d like to ask you about and, I understand, no time. Could we start with the first couple, briefly? You’ve raised a couple of issues that I don’t think anyone else has raised today, which are the issues that I see showing up on the second page of your brief around training of judges and stewards; there seems to be some question around how they’re enforcing the rules. So if you could comment briefly, either one of you, with respect to that.

Then you’re also talking about another issue that I don’t think has been raised earlier, which is the matter of private property rights. I’m not sure the committee is even aware of what you’re alluding to when you talk about ORC interference in private property rights. If you could explain briefly what those two issues are, and then if we’ve got some time left, I’d like to ask you specifically about the issues around border tracks.

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Mr. Robert Locke: Okay. Ted will actually talk about the first part, on the training of the judges and stewards.

Dr. Ted Clarke: Thank you. My name is Ted Clarke. I’m manager of Grand River Raceway in Elora.

In this issue, I think what we really hope to draw attention to is the fact that a great effort has been made in expanding the investigative capacity of the racing commission, which is of course the first bullet that’s up there. On the second bullet, on the judging side, it would appear that there isn’t a clearly focused mandate under which the judges are able to perform in a way that is acceptable to the public and facilitates more professional operation and so on.

Mrs. Liz Sandals: Can you give me a simple example, Ted?

Dr. Ted Clarke: There was a recent race at Western Fair Raceway where a horse left the racing surface, went inside the pylons, advanced about 13 or 14 pylons in the

inside of the racetrack, came back on the track and was awarded a win for that race.

Mrs. Liz Sandals: Okay. That would seem to be a problem.

Dr. Ted Clarke: It was an enormous perception problem, and the difficulty with it was that not only was there probably an error in the initial judgment, but the next day there was no clear taking control of the situation from the commission itself. I know that they have an enormously difficult job and that, in today's world, because there are video replays available everywhere in the world, this thing was on YouTube about five minutes after the race was completed and everybody saw it. It's an issue, by and large, of establishing some capacity to have respect in this industry, and this was clearly a case where the respect didn't come to the surface.

I've known a number of judges for a very long time and some for lesser time. They're not incompetent people. They have a system that somehow or other is failing them, and I guess what we're hoping to do is re-focus some of the investigative initiative toward upgrading the judging side of this business.

Mrs. Liz Sandals: Okay. And then the other issue around the private property rights?

Dr. Ted Clarke: Since Robert represents a private owner, I'll let him speak to that one.

Mr. Robert Locke: I think, on that part, it's trying to draw the line as to where the regulation stops and where the operation of a private business starts. It's a grey area, and I guess part of this is that we're not sure if we have to do it and we're hoping that we don't have to do it through any type of amendment of the act. But is there maybe a clarification of when the ORC is going to come in and, say, mediate or not mediate? We're not actually quite sure if the regulator should be used as a mediator.

Mrs. Liz Sandals: So give me an example, as somebody who's not a race industry participant, of where private property rights would arise.

Mr. Robert Locke: Woodbine has actually had a few issues on their side. It actually hasn't really happened on our side. I guess my focus would be if there are any issues with a contract with our horse people or a contract, say, with our Pari-Mutuel people or anything like that and where we're not racing. I'll talk to that because we have a concern with that as to if or when the ORC would actually come in and mediate or force us back to racing, because it's actually in part of our new licence. I'll read the section to you:

"The association shall conduct race dates as set out in the attached calendar and as approved by the director. Failure to conduct some or all race dates in accordance with the attached calendar will be considered non-compliance with this licence and may result in fines, penalties or notices of proposed order to revoke or suspend the licence."

Mrs. Liz Sandals: So if I'm understanding the example you gave of Woodbine, where there was a strike of non-racing employees, if I can put it that way, that cancelled race dates, and how does that issue get resolved?

Mr. Robert Locke: No, sorry. I didn't clarify it enough. Maybe I'll let Ted talk about the Woodbine issue. He's a little more familiar with it than I am. I was talking about other issues as to issues with the horsemen or things like that.

Actually, as the executive director, Mr. Blakney, when he first came on board—the industry as a whole doesn't always work well together. It's probably like any industry where there are different members of one group. We're not all one big, happy family. I think everybody realizes that.

Mrs. Liz Sandals: I think we figured that out.

The Chair (Mrs. Julia Munro): On that note, I'm going to have to turn to Mr. Hudak.

Mr. Tim Hudak: Thanks very much, gentlemen. I appreciate the presentation. Can you talk a little bit about the mandate creep in terms of what you mean by "commercial activities" that the ORC is trying to regulate, other than its original mandate? It was in the ORC mandate, at the fourth paragraph, so the bottom of the second-last page. It says: "Stretching the hand of the commission into commercial activities of participants, whether racetracks or horse people, should be limited to those areas that pertain directly to conduct of horse racing." What are you worried about?

Mr. Robert Locke: Go ahead.

Dr. Ted Clarke: If I could speak to that, and I may be speaking in the wrong way, because I'll represent one of the issues we see on the horse people's side.

The commission now has, for instance, a rule that suggests that every trainer must have a contract with the owner whose horse he takes. The tradition in this business, developed over a very long period of time, has not been one that would have a long basis in written contracts between trainers and horse people, or trainers and owners. It's one of those spots where I guess I would raise a question as to why it's necessary for the commission to be involved in that sort of commercial transaction.

Similarly, when I'm selling something out of my gift shop at the racetrack, I would question why the person who is my salesperson needs to be licensed under the Racing Commission Act of Ontario. It seems to me to be a bit of a stretch that somebody who can sell trinkets downtown doesn't need that licence and somebody selling at the racetrack does. Their function is the same. It has absolutely no impact on racing or the business of racing. Really, it seems to me to be a place where the commission wouldn't need to be involved in our business.

Mr. Tim Hudak: You mentioned that the ORC undergoes a consultation on new rules. You've expressed some satisfaction and some dissatisfaction with the process. Do they have any kind of process to review existing rules and see if they can be eliminated? The province, for example, has an ongoing red tape process to try to update its regulations.

Dr. Ted Clarke: I'll be attending a meeting on, I think, Thursday of this week for the very purpose of the rule review committee. So there is a process.

To the issue of the adversarial positions that we have, it is perhaps the need for the commission to establish that it is in firm control and understands its business, so that the rest of us can function in a way that we know where we're at. So when we go and spend several days giving input that we think is thoughtful, and it's completely disregarded, we think there could be a better outcome.

There is a need for the commission to establish itself in a position where it in fact takes on the burden of the administration of regulation of the sport. This is one of the places where our means of communication is not good enough.

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Mr. Tim Hudak: Okay. You mentioned another area of overlap, and the ORC in their presentation mentioned it as well, and that's the duplication between the AGCO and the ORC in certain licensing circumstances. You used the example of the notion of the dishwasher at a restaurant at a racetrack having to be licensed by the AGCO—

Dr. Ted Clarke: By the ORC.

Mr. Tim Hudak: Sorry, by the ORC. So are dishwashers not also licensed by the AGCO?

Dr. Ted Clarke: I don't think so. They're not actually conducting business with OLG. But if I can go to a more specific example than that one?

Mr. Tim Hudak: Perfect.

Dr. Ted Clarke: At this moment in time, I have a request on my desk from the gentleman at AGCO to produce the last five years of my income tax, all of my financial dealings and everything else. I produced them 11 months ago for the ORC, so I've been vetted twice within a year, for the same purpose essentially, and there appears to be no capacity for the two to make use of each other's research or resources or whatever. The OPP guy who is talking to me now is a different person than the one who talked to me last February or whenever it was, but they know each other. I actually suggested to him that he should call her and figure out how to share the information. It hasn't happened and, obviously, I'm now producing the same records over again, but it seems wasteful.

Mr. Tim Hudak: You also mentioned that the number of rulings issued by judges has stayed constant—1.1 races per day from 1998 until 2007—but the commission has increased its investigative staff from four to 20 over a similar time period. So if the rulings are staying the same by the judges, what are the investigative staff spending their time on? That's a five-fold increase.

Dr. Ted Clarke: I would suggest they may be finding that the industry actually is a pretty straight-up place.

Mr. Tim Hudak: I'm sorry, but how does that justify going from four to 20 investigative staff if the rulings stay about the same and the race gains have—

Dr. Ted Clarke: I think that's why we raised the point. We're not sure that there is a need for that size of an investigative staff.

Mr. Tim Hudak: Thank you. Maybe Mr. Kormos has a question. I could go on but, seeing the Chair is—

The Chair (Mrs. Julia Munro): You really have exceeded the time that we have. Mr. Kormos, please.

Mr. Peter Kormos: Thank you kindly. You've been very obscure, obtuse, about this privacy, contractual-relationship third party—Ms. Sandals was doing a very good job; even she couldn't extract the facts from you. You have to tell us, please. Something's going on and you want to talk about it—I feel like a therapist—but you have to block. That's number one. Number two, there's the issue about Woodbine and the strike. I remember, it was a few years ago, but I was on the picket line with those workers striking at Woodbine, so I'm certainly interested in that issue, too. Can you tell us about those? Maybe enough information for Mr. McLellan, as researcher, to prepare a little memo. We want to understand.

Mr. Robert Locke: I'll try and clarify. When I was talking about the strike or the issues at Woodbine, Woodbine was actually bringing up some issues about the privatization. I'm not clear as to the specific details of it, so I'm actually going to ask Mr. Bruce Barbour, who is with Great Canadian Gaming—he is the director of Flamboro raceway. He actually just came up and said that he would like to answer the question. He's going to be here. He's also a director on the OHRIA board, so he'll be here for the next presentation.

Mr. Bruce Barbour: Thank you. With regard to private property rights and the concerns that we as race-tracks have—and I won't speak for Woodbine, but I'll give a very specific example at Georgian Downs, which is a racetrack owned by Great Canadian Gaming. In the winter of 2007, we no longer had a racing contract with OHHA. Our contract ended on December 31. As of January 1, we did not have a contract. OHHA is not a union; they're an association that we contract to have horses race at our track. We could not reach a commercial agreement with them, which is fine. That's what we do; we negotiate etc. The strike, if you will—and it probably really wasn't a strike, in that there was no contract with another commercial entity, OHHA.

Mr. Peter Kormos: But the so-called strike was by OHHA, not by unionized workers like—

Mr. Bruce Barbour: Right. Exactly.

Mr. Peter Kormos: Okay.

Mr. Bruce Barbour: The Ontario Racing Commission called us to task, threatened our licence—and I'll be honest, they threatened our racing licence—and very strongly suggested that they mediate the deal between us and OHHA, which we chose not to do. We then chose an outside arbitrator, a retired justice, and we did get a deal done. In our opinion, it is not up to the ORC to interfere with a private, commercial matter between us and, in this case, OHHA. It is up to the ORC, in my opinion, to regulate racing, not regulate the commercial aspects with which we deal. That, I think, is a pretty clear example of why I don't believe that the ORC should be stepping into commercial matters.

Mr. Peter Kormos: Now I understand. But is this a single instance, or is there sort of a pattern of this? You've raised it as if it's a big problem.

Mr. Bruce Barbour: It is a big problem. I won't speak for Woodbine. Mr. Eaves is not here. I'm sure he would have some issues as well. We have the same issue—not the exact same issue. We had a contract with OHHA at our other track, Flamboro, which called for us to have backstretch stabling. Our interpretation of the contract was that we did not require backstretch stabling. Again, the ORC stepped into what we believed to be a commercial matter, ordered us to keep it open for an extra year, and ultimately it was negotiated and then decided by an arbitrator that, no, we were correct. The ORC, in my humble opinion, should stay with regulating races, not commercial matters.

Mr. Peter Kormos: Had OHHA asked the ORC in the first instance of this to intervene and attempt to resolve this?

Mr. Bruce Barbour: I don't know.

Mr. Peter Kormos: That wouldn't have been unfair in and of itself, would it?

Mr. Bruce Barbour: Sorry?

Mr. Peter Kormos: Would it have been unfair for OHHA to have asked them to attempt to mediate?

Mr. Bruce Barbour: I can't comment on what OHHA did or whether they would consider it unfair. Whether they asked them or not, my opinion would be that the ORC should not have treaded in that—and the contract was clear. Quite frankly, our contract with OHHA did not say that the ORC would arbitrate.

Mr. Peter Kormos: Fair enough. I hear you; I understand you. I guess I'm a little more benign about the prospect of the ORC trying to resolve a problem that's interrupting live racing. But we haven't discussed the matter fully. Thank you very much.

Thank you, Mrs. Sandals.

The Chair (Mrs. Julia Munro): Thank you very much for being here today. We certainly appreciate the time that you've taken to participate in the committee.

ONTARIO HORSE RACING INDUSTRY ASSOCIATION

The Chair (Mrs. Julia Munro): I'd like now to call upon the Ontario Horse Racing Industry Association and Hector Clouthier, the executive director.

Mr. Hector Clouthier: Bruce, the previous speaker, did such a marvellous job, so I wouldn't let him leave the table.

I'm going to keep this commensurate with my height and my hairline: I'll keep it short, because I'm sure that there will be some Q & A, and you're probably tired of being bombarded with facts and figures and everything else. It's about a page and a half, and then we'll open it up for Q & A, with your indulgence, Madam Chair.

The Chair (Mrs. Julia Munro): Certainly. You may begin whenever you're ready.

Mr. Hector Clouthier: Thank you very much for inviting us here today. I regretfully apologize on behalf of our president and CEO, Hugh Mitchell, who cannot be with us today. He's out of the country on previously arranged business.

Overview: The Ontario Horse Racing Industry Association, better known as OHRIA, is a not-for-profit corporation acting as an umbrella association for the Ontario horse racing industry, representing horse people, breeders and racetrack operators engaged in standard-bred, thoroughbred and quarter horse racing. OHRIA, since its inception in 1995, has been recognized by its external stakeholders as the unified voice of the horse racing industry. The broad mandate of OHRIA is to further the interests of horse racing in the province by acting as the advocate and champion for the industry on industry-wide positions, programs and activities.

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The Ontario Racing Commission's role and responsibilities: In our opinion, the government would select members for the governing board of the ORC from a list of candidates submitted by OHRIA. ORC would, acting as an arm of government, be responsible for developing, implementing and enforcing all rules and regulations pertaining to live racing; administering and approving the licensing of all participants in the horse racing industry; ensuring licensees' compliance with all racing rules and regulations through fines and suspensions; protecting through regulation the health and safety of both the equine and human athletes participating in live racing; protecting through regulation the integrity of the live racing product and the interest of the betting public.

OHRIA's role and responsibilities:

- to provide a forum for industry sectors to speak with one voice on matters that have broad implications to the industry;

- to promote the horse racing industry as a vital part of Ontario's agricultural, entertainment and gaming sectors;

- to advocate on behalf of the industry the public benefits of the horse racing industry;

- to develop and administer activities and programs that benefit the horse racing industry through co-operation and broad participation;

- to maintain and grow productive relations with government, government agencies like the ORC, OLG, CPMA, AGCO, and key stakeholders;

- to guide the creation and implementation of strategic plans;

- to work with regulatory bodies—ORC, CPMA, AGCO—to ensure continuous improvement to the industry's regulatory framework;

- to take a positive role in responsible gaming by partnering with the Responsible Gaming Council of Ontario, RGCO, to develop programs to promote responsible gaming at all horse racing facilities;

- to work with government to eliminate illegal Internet gaming on horse racing.

New roles and responsibilities that we propose are:

- to extend the partnership with OLG to include joint marketing and cross-promotion programs to promote racetracks as gaming and entertainment destination sites;

- to encourage the development of different breed plans and programs to establish a business plan for expanding and enhancing the Ontario standardbred, thoroughbred and quarter horse industries;

- to be responsible for overseeing all commercial/economic aspects of the horse racing industry, but will stay neutral and independent of any and all commercial dealings between racetracks and their respective horse people;

- to promote and encourage customer-focused innovations among industry stakeholders.

That, Madam Chair, is a very brief synopsis of our dissertation, and now we can go to Q&A, if you so wish.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin, then, with the official opposition. Mr. Hudak?

Mr. Tim Hudak: Great to see you. Thank you for being here today.

The Sadinsky commission report had considerable discussion this morning. While there was great dust and fanfare around the consultations and around the report, it seems to have been left in the starting gate, so to speak, at that point in time. What's happening?

Mr. Hector Clouthier: I don't know. Maybe it's a cheap claimer, to use the horse racing metaphor. I don't know, Tim. You know government, I know government, sometimes they commission things like this and they collect dust. Without a doubt there are some very good things in the Sadinsky report. There are some things in there that most certainly should not be in there. Where it's going to go from here, your guess is as good as mine. It's in Minister Smitherman's hands. He will look at it and carefully review it, and I guess at the end of the day, it is his decision to make.

Mr. Tim Hudak: I'm trying to refer back to my notes here. It came out in 2007 or was it early—

Mr. Hector Clouthier: It was 2008.

Mr. Tim Hudak: Okay. The panel reported in June 2008. Has there been no progress to date?

Mr. Hector Clouthier: To be candid, Mr. Hudak, there's been a change of minister. Any time there's a change of ministers—different portfolios—you're going to take your time, and you're going to have to get briefed on it. Listen, George Smitherman does not need Hector Clouthier to defend him, but he's got a lot on his table and I don't know where this is on his priority list.

Mr. Tim Hudak: Do you anticipate some movement on it? It's not just going to sit on the shelf? What's the indication that's been given to you?

Mr. Hector Clouthier: Hopefully, there would be some movement on it, good or bad or indifferent; I don't know.

Mr. Tim Hudak: To your point, there are some things that you like that were in the report. The government's

going to move on parts of the report. What finds favour with—

Mr. Hector Clouthier: You know what I did like in the report, and I haven't heard it yet this afternoon—it was talking about a gaming secretariat. I believe it is vitally, vitally important to have something that is a gaming secretariat which would be a conduit between the horse racing industry, the government and the OLG. I know that it was prioritized in the Sadinsky report, but I haven't heard much about it lately. I believe it is very important that we would have a gaming secretariat as something you could go to explain where you think the industry should go without going directly to the ORC. They could be the middle person or the facilitator.

Mr. Tim Hudak: Maybe I'd ask of you, Chair, if research could follow up with the ministry to see what their intentions are with respect to the report and timing.

One of the recommendations that met with support on some sides, and others not, was Horse Racing Ontario, which I guess would replace OHRIA in some sense. I'd like your view on the proposed HRO.

Mr. Hector Clouthier: Well, if it follows the HRA in Alberta, it's been a disaster. I don't know if you know what happened out in Alberta. Basically, I think that Mr. Sadinsky's report in that regard was patterning itself after HRA because I believe—I could be mistaken—that some of the Horse Racing Alberta people came and met with him. I think that that was his idea of something to go—Horse Racing Ontario and OHRIA would basically segue into it with other industry stakeholders. Whether that would work, once again, I don't know. I don't know what the mandate for it would be. I don't know what the powers of HRO would be, whether they would look—if the HRO did come into existence and one of the powers was on the commercial aspect of the business, I would agree with that 100%. But if it was going to delve into individual racetracks and start negotiating contracts, I wouldn't be in favour of that.

Mr. Tim Hudak: As you know, and it's no surprise, I'm sure, to you that a lot of discussion this morning was about the future of the Fort Erie Race Track and some of the risks to other border-area ovals. The Sadinsky report did recommend a change in the slot revenue, though it would be pooled. It recommended 25% would go to the owners, 25% would go toward purses, although, as I mentioned, a pooling mechanism—is it fine for the government to revisit the slots-sharing agreement? And what do you think of Sadinsky's proposal?

Mr. Hector Clouthier: It's interesting you brought that up, Mr. Hudak, because OHRIA did meet with Mr. Sadinsky after his report was tabled and we specifically asked questions about that component. To this day, we still haven't got it clear in our mind. I don't know if Mr. Sadinsky really—I shouldn't be speaking on his behalf, but I don't know—we started asking him pertinent questions, and it was kind of all over the map because then he started talking about designating a certain amount of money to breeders, a certain amount of money to the thoroughbred people. It was kind of convoluted. I think it

was a bit of a work in progress, and I think that perhaps he was going to leave that to the gaming secretariat to work its way through.

Mr. Tim Hudak: Okay. We'll set aside Sadinsky's particular recommendation, then, in terms of the slot-sharing agreement—

Mr. Hector Clouthier: Okay. Listen, it'll come as no surprise to the people in this room that we are adamant that the 20% remain intact. The industry, to tell you the truth, is very concerned and very worried that perhaps there could be a change in the 10% to the track and 10% to the horseman. The original MOU was clearly specific that the reason for the slot deal was to preserve, protect, promote and help the horse racing industry. They did designate 20% of the net of the slots to it, so we would not, in any way, shape or form, be in favour of any reduction. If they want to give us more, certainly, we'll say, "Go to it. Fill our coffers."

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Mr. Tim Hudak: And I'd assume OHRIA would be of the strong view that was expressed by myself, Mr. Kormos and Ms. MacLeod: No horses, no slots.

Mr. Hector Clouthier: Oh, that goes without saying. If there's no live racing, there should not be any slots, and in particular in the Fort Erie situation we have already sent a letter to Mr. Smitherman indicating that we believe there definitely should be live racing at Fort Erie this year, otherwise the slot deal is over.

As you, Tim and Peter, certainly know a lot about the Fort Erie situation, there are some mitigating factors there that some other tracks—and I see Mr. McNeely here and Ms. MacLeod. Rideau Carleton is not immune from it either. Rideau Carleton is suffering a bit because of the casino over in Hull. But specifically to Fort Erie, there's a plethora of problems that all of a sudden reared its ugly head in Fort Erie: After 9/11 it was certainly a lot more difficult for the Americans to come across the border; there were a lot more security checks; the American dollar was high as opposed to Canadian dollar, low; two new casinos, one in Buffalo, one about 90 kilometres south of Buffalo, along the lakeshore, and that really did hurt. On top of that, in the last three or four months the economy has gone into the tank.

The Chair (Mrs. Julia Munro): Excuse me. Could I just interrupt you to ask you to sit back a bit from the sound. It'll work.

Mr. Hector Clouthier: I was just trying to get away from Kormos. He was moving over this way.

The Chair (Mrs. Julia Munro): You can move along further, if you like. That's fine. Sorry to interrupt.

Mr. Tim Hudak: OHHA expressed concern too about the situation in Belleville, that we could have a slot facility operating without guaranteed race dates, hopefully in the next year. What's your view on how you approach that situation?

Mr. Hector Clouthier: Without a doubt they should not get the slots unless there is clearly a contract signed that they will provide race dates. I can't dictate the timing on it, but there most certainly should be a contract signed

within a specific time frame that they would have the live racing going. Let's face it, some of the tracks as we currently speak, are shut down for two or three months and the slot revenue builds up and then it goes into the purse account, which is fine. But they should not allow Belleville to operate without a signed contract on live racing.

The Chair (Mrs. Julia Munro): We'll move to Mr. Kormos.

Mr. Hector Clouthier: Uh-oh.

Mr. Peter Kormos: Thank you kindly. Tim, help. It seems to me that a recent government had us vote for legislation that was going to allow cross-ministerial communication so that people like Mr. Clarke wouldn't be put into the position he was put in. Do you recall that legislation?

Mr. Tim Hudak: I remember that bill.

Mr. Peter Kormos: Which government was that?

Mr. Tim Hudak: The McGuinty government, if I recall.

Mr. Peter Kormos: I voted for it. It obviously isn't working.

Look, Sadinsky was talked about. One of the things that Tim and I find attractive about Sadinsky, as well as Ms. MacLeod and Mr. McNeely, is that we've got these border casinos with these special problems, special pressures, and Sadinsky talks about special economic deals for those racetracks in an effort to sustain those, especially now, in this very difficult time. I only want to raise this with you. Your proposal has been the closest commentary to blending casino gaming with live horse racing. It's been the closest that I've seen, and maybe you don't intend that. My concern about that, although I do support the proposition of a gaming secretariat, as you do so you can coordinate these things—and you have to have integration in terms of slots versus the live racing. People have been using the neologism that it's entertainment. To be fair, and maybe it's because of my age, I consider an afternoon at the racetrack a relatively benign thing.

Mr. Hector Clouthier: Probably your age.

Mr. Peter Kormos: But I've got to tell you that if gambling can be addictive, the horse track, the live horse race, is perhaps the pot as compared to the crack cocaine of a row of slot machines. I'm telling you, I come from a community that has increasingly attracted people onto casino floors, and the problems have increasingly compounded. It's a totally different type of activity. I can agree with your proposition that a racetrack on a sunny afternoon, out in the open with all the hoopla, is entertainment. I don't know. Maybe I haven't been to enough casinos, but seeing people fixated, sitting for hour after hour in front of a slot machine, pressing the damned button, from my perspective ceases to be entertainment.

My concern is that live horse racing will lose, at the end of the day, against the far more efficient cream separator—in terms of separating people from their money—of electronic gaming equipment. My real concern is that at the end of the day all the best efforts will

be to no avail. We'll have virtual horse races because people will bet for horses on a screen. They don't have to be real horses. Any number of software manufacturers will make them.

My concern is that we have to be very careful if we're really interested in protecting live horse racing and the agricultural industry. That's my motive: to keep some isolation between casino-type gaming, which is hard-core gambling, versus horse racing, which is a lot more than just the bet.

Mr. Hector Clouthier: Is that a statement or question?

Mr. Peter Kormos: No—

Mr. Hector Clouthier: I had a few horses that I thought were real horses, and the way they went, they acted like virtual horses. But it's not that I don't want to answer you, Peter; I'd be a little more concerned, if I were Hudak, that you and he seem to be getting along here on both ends.

Laughter.

Mr. Hector Clouthier: I knew that the Liberals would get a kick out of that one, right, Maria?

Mr. Peter Kormos: It's a regional thing.

Mr. Hector Clouthier: I'm going to defer to my friend here, Bruce Barbour, because I'll be accused of eating the microphone if I don't back off here a little bit.

Mr. Bruce Barbour: I'm not even sure of what the question really was but I'll take a stab at it.

Mr. Peter Kormos: Please.

Mr. Bruce Barbour: First of all, virtual horse racing has been tried in the province of BC, and quite frankly wasn't successful. It was through the lottery corporation in BC that they did try a game that included horse racing, race cars, along the lines of Keno; in fact, it was Keno disguised as horse racing, and that's not what our customers want or, quite frankly, need.

I think there is a big difference between a customer going to the racetrack and everything that goes along with the racetrack experience, whether it's the agriculture or the closeness of the horse—the fact of the matter is that you're outside, to some degree, on a day in May, June or July, as an example, as opposed to being in a slot parlour, for want of another term. I think whether we like it or not, we are joined at the hip, at this point in time, with the slot industry, if you will, or the OLG. I would dare say that I'm not sure that horse racing could survive without the revenue coming from slots now, so I don't think it's as simple as, "Let's just separate the two," if that's kind of what you're asking. The revenues that flow both to ourselves as racetrack operators and to the horse-men, in the case of the purse pools for the horse-men, as an example: With the exception of probably Woodbine, 85% of the purses that the horse-men race for come from the slot revenue. So the two are joined at the hip, if you will, and I don't see one proceeding without the other.

Can we go back in time and remove slots from racetracks? I don't think so. I think that horse is out of the gate, so to speak, and we are where we are. Yes, we can separate them to a degree, and they are two different

forms of gaming, but we are joined at the hip. So I don't know if that—

Mr. Peter Kormos: No, but that's fair enough. I'm interested in what you had to say. Thank you.

The Chair (Mrs. Julia Munro): Mrs. Sandals.

Mrs. Liz Sandals: Thank you for coming today. I'm looking at the presentation you made, and I think the last section is new roles and responsibilities for the ORC that you're proposing, right? When it says "New Roles and Responsibilities," those are for the ORC, or for OHRIA?

Mr. Hector Clouthier: Those would be for OHRIA.

Mrs. Liz Sandals: So you're suggesting that OHRIA would actually become responsible for overseeing all commercial and economic aspects, so that you become the sort of financial overseer?

Mr. Hector Clouthier: Mrs. Sandals, if OHRIA did morph into something like HRO, as proposed in the Sadinsky, OHRIA or an entity very similar to it would take the commercial aspect of the horse racing industry away from the Ontario Racing Commission. To be fair and to be honest, we, the industry, four or five years ago, whenever it was, were incapable of doing that, and that's how the Ontario Racing Commission did get involved in it. Some of the previous presenters said that there seemed to be a mandate creep in there. I guess the Ontario Racing Commission, in its wisdom—they thought they were doing the right thing—seemed to be encroaching upon the business end of it.

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We in the industry believe that the industry itself should look after our own commercial aspects. Mr. Barbour knows that very well. He was speaking about the ORC encroaching when there was no contract. We think that the Ontario Racing Commission should, as we have specified their role, make the rules, regulate and be the regulator.

Mrs. Liz Sandals: You're also proposing that the racing commission would be formed solely from candidates submitted by OHRIA. It seems to me, then, that you're suggesting by extension that OHRIA would be both the commercial manager and, in essence, the controller of the regulator.

Mr. Hector Clouthier: No, not necessarily. We said that we would like the opportunity to submit names to the government and they could pick from them. It's very similar, I guess, to what they're proposing with some of the Senate reforms. The provinces would submit names—

Mrs. Liz Sandals: We haven't submitted support. In fact, our party says, "Get rid of the Senate."

Mr. Hector Clouthier: I know Dalton's on record as saying, "Get rid of the Senate."

Mrs. Liz Sandals: So I wouldn't go there, as a model.

Mr. Hector Clouthier: The federal government has said that they could look upon that. So what we are saying is that we, the industry—and the only reason we're saying OHRIA is because OHRIA is the umbrella organization. The vast majority of the presenters here today giving their briefs are members of OHRIA.

To be candid, sometimes it's like herding cats. It's a little difficult to get along. But hopefully cooler heads can prevail and we can see the light at the end of the tunnel and we can determine our own future by coming together and coalescing as one strong body.

Mrs. Liz Sandals: I understand you're not a self-regulating profession, but the model in self-regulating professions tends to be that while the profession selects some of the bodies to sit on the regulatory college, the government appoints a number of public-interest reps who are totally independent of the industry, because the regulator is presumably ultimately responsible for acting in the interest of the public. It seems to me that you're suggesting that the racing commission should be acting solely in the interest of the industry, because that's where all the participants would come from, as opposed to protecting the public interest, which is the way self-governing colleges are set up. So I'm really struggling with a regulatory agency that is totally populated by industry representatives, who we have all admitted are often a little bit like this.

Mr. Hector Clouthier: I know where you're coming from. Perhaps our brief was too brief, because, just to clarify, when we met with Mr. Sadinsky, we did propose that there would be three outside commissioners appointed by the government.

Mrs. Liz Sandals: Okay. Just for the record, because I always need a program, could you explain to us who's currently in OHRIA and who's currently out of OHRIA, because I'm not sure that everybody sitting around the table here would automatically know that.

Mr. Hector Clouthier: Basically, everyone in this room is in OHRIA. OHHA had left OHRIA. There was a bit of a *bête noire* there about two and a half years ago. I don't know if this is the right public forum to make it official, but the president indicated by way of letter and by a telephone conversation that OHHA has decided to rejoin OHRIA, and we're immensely happy about that, very, very pleased—ecstatic, to use the word.

Mrs. Liz Sandals: Okay. So everybody's in; we've got the scorecard sorted out.

Mr. Hector Clouthier: Now all we have to do is just get everyone into the room and work things out.

Mrs. Liz Sandals: If you could all agree when you're all in the same room, that I'd really want to see.

Mr. Hector Clouthier: Yes. It would be something like question period. That's why I was a little concerned about Hudak and Kormos agreeing on something.

Mrs. Liz Sandals: Okay. Thank you.

The Chair (Mrs. Julia Munro): Thank you very much for coming here today. We certainly appreciate your participation.

Mr. Hector Clouthier: Madam Chair, with your indulgence, I have a brief here from the Canadian Thoroughbred Horse Society. They were to be here, but something got misconstrued and they weren't on the agenda. They asked if I would be so kind as to just give the submission to Mr. Arnott. Okay?

The Chair (Mrs. Julia Munro): Certainly. It will then be distributed to all members.

Mr. Hector Clouthier: Thank you very much.

STANDARDBRED HORSE OWNERS PANEL

The Chair (Mrs. Julia Munro): I'd like to call up the Standardbred Horse Owners Panel. Lou Liebenau is the president and Dave Drew is the executive director. If you would just identify yourselves for the purpose of Hansard. As you know from observation, you have 30 minutes. You may use that time, and any that remains will be for the members of the committee. If you're ready?

Mr. Lou Liebenau: Thank you, Madam Chair. I'm Lou Liebenau, president of SHOP, with Dave Drew, executive director. We appreciate this important opportunity to provide input regarding the Ontario Racing Commission.

Very briefly, SHOP is an association of owners/investors founded on the principle of integrity in racing and is forever focused on the viability of horse ownership. Currently, our membership holds the papers on approximately 1,500 horses in the province of Ontario. Dave?

Mr. Dave Drew: I'm Dave Drew, the executive director. We have a very short, succinct group of charts that gives our position relating to the Ontario Racing Commission.

The first item is that we view the Ontario Racing Commission as having a good process for input from the industry. Certainly SHOP welcomed the opportunities that it has had to participate in ORC initiatives, whether they be input on the new owner responsibility rule, in which the Ontario Racing Commission not only put provisions for fines and suspensions for the trainer of the horse, but also will suspend the horse itself for up to 90 days. So there's an impact on owners, which we view as being a positive move by the ORC with input from us. We've participated in the horse improvement program; we have a member on the medication task force, which is a very important initiative, from our perspective, related to the long-term integrity of racing. There are other current activities, such as the use of the whip, safety lines and input on current 2009 rules.

I want to comment on the ORC's mission, vision and mandate, and the strong premise of that is on integrity, protecting the public interest, the health and safety of the horse and participants in racing, and industry sustainability. The Standardbred Horse Owners Panel strongly supports the current mission, vision and mandate. Integrity is a very strong tenet of the Ontario Racing Commission and is consistent with the founding principles of the Standardbred Horse Owners Panel, so we are very much in favour of a continuation of work to improve the integrity in racing. Our organization recommends that the Ontario Racing Commission remain focused on its existing mission, vision and mandate and

continue to do it well, as opposed to any expansion of the existing mandate.

The next primary area where we have a strong interest is the area of rules for racing. Our view is that the primary and essential rules are in place for racing. We will continue to work on refinements through committees and so on. Rules such as out-of-competition testing, which the Ontario Racing Commission has put in place, we view as a strong move toward protecting the integrity of racing and in our view have had an impact already in Ontario. We should use these current rules as the basis for improvement and continuous improvement in integrity.

We believe there should be a strong focus on enforcement of the rules to improve racing and continuing the activities of being transparent in the enforcement of those rules, publication of decisions with all of the detail and rationale behind those decisions, including the provision for appeal, obviously, in terms of having a fair process.

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In brief summary, we believe we should stay the course with the Ontario Racing Commission in terms of its mission, vision and mandate; continue to promote integrity as the primary tenet for improvement in racing—the fans absolutely want integrity in racing, and that is what we're dependent on; and continue to strengthen the enforcement of rules in order to achieve that. Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. Mr. Kormos.

Mr. Peter Kormos: Thank you, gentlemen. Briefly, OHRIA, interestingly, proposes that ORC, or whatever it's name might be, consist of members nominated by OHRIA, which OHRIA says is an accurate representative of a broad cross-section of players. They don't dispute the role of ORC, and indeed appear to be in agreement with me in that regard. What do you say to their proposal about OHRIA being the nominator? It doesn't necessarily mean that a nominee has to be a member of OHRIA, but that OHRIA, being representative of the whole industry, be the nominator of at least a significant number.

Mr. Lou Liebenau: Well, if I might, Mr. Kormos, just say that it's OHR-eye-A, not OHR-ee-A, because OHR-ee-A sounds like a disease, so—

Mr. Peter Kormos: Ah, my apologies.

Mr. Lou Liebenau: So we should maybe go with OHR-eye-A.

Mr. Peter Kormos: You understand I come from small-town Ontario, right? We don't use acronyms where I come from.

Mr. Lou Liebenau: Yes. We have participated before in questions and answers, and I appreciate your intensity.

We believe, as our presentation has said, that the racing commission should be a regulator and should work very strongly in the public interest and do what's good for the actual racing of the horses. We do believe at this point that OHRIA, or an umbrella organization like OHRIA, is the best vehicle to bring the industry together, and, for lack of a better word, the major players in the

industry should have a much larger say in appointments and how the commercial part of the industry functions.

Mr. Peter Kormos: And that's fair enough. Sadinsky proposes that the ORC be rolled back to its traditional role of the bare-bones enforcement of racing rules and regulations, as compared to this sort of, by default, assumption of responsibility for the sustainability of the industry. Sadinsky says that that should be a separate function by a separate body. I put that to you, because that's interesting to me.

Mr. Lou Liebenau: Not remembering all the details of the report, I would say that about 80% of our recommendations to the Sadinsky report are in the report. So the traditional function of the racing commission is what we would be very much in favour of, as representing owners, investors and racing—the viability of the integrity, of the level playing field, of the distribution of the funds available in a manner that represents and respects the investment in the horses is of the most importance to SHOP.

Mr. Peter Kormos: This committee is only dealing with ORC for one day—today. It just naturally flowed into ORC in the lens of Sadinsky, along with the help of a whole lot of other commentators. Why shouldn't the government simply get draft people implementing Sadinsky, creating this new structure legislatively, and then we can have serious hearings over the course of a number of days with all the players commenting and fine-tuning that? Would that be something that would be a laudable activity?

Mr. Lou Liebenau: I believe that the Sadinsky report should be a starting point for the industry and be used in the way of guiding the industry into possible fine-tuning, and the industry getting together. I think it has a lot of benefit.

Specifically to SHOP, I'm not saying the formula indicated in the report is acceptable, but the concept of taking the funds that are available and pooling them and redistributing them in a more equitable manner is very much an initiative that SHOP would be in favour of.

We have a situation now where there are some tracks whose purses have increased 300% to 400% with the slot program and some tracks where—for instance, Woodbine-Mohawk, which provides a tremendous number of race dates—the purses have increased approximately 60%. We have a formula, unfortunately, where the tracks that race a lot of dates are punished for racing a lot of live dates because you only have so many slot dollars at that track and they get divided into the number of race dates. In effect, the thoroughbreds at Woodbine race about 160 days. They get the same slot revenue as harness. We race about 80 more days. So our revenue, from slots, equal to the thoroughbreds', goes into 80 more race days.

Mr. Peter Kormos: You know the concern that Mr. Hudak and I have about Fort Erie Race Track. It's on the ropes, to mix a sports metaphor from another arena with horse racing. Do you agree with us that it's important that the government do what it has to do to help that racetrack?

survive during what is clearly a very, very difficult and special time?

Mr. Lou Liebenau: I would want to delve into the problem. I do not have the details of the situation. We believe that all participants in horse racing are very important to the industry, whether they be grooms, riders, hot walkers, whoever they are. They all have a place in our industry. I think, just from hearing previous answers to questions regarding Fort Erie, that a special-circumstance provision needs to be created where perhaps revenue can be relocated and supplied back to Fort Erie for horses to race. I don't have a formula, but I think that it needs some kind of a creative scenario where machines might be transferred to other tracks in Ontario and some of the revenue go to Fort Erie.

Mr. Peter Kormos: Thank you kindly. Thanks for your patience with us, or at least with me, today. I appreciate it.

Mr. Lou Liebenau: You're welcome.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move to Mrs. Van Bommel.

Mrs. Maria Van Bommel: Thank you very much for coming here today. You are a relatively new organization. I'm just wondering, what prompted you to form as an organization? What happened to make you do this and move into something of your own?

Mr. Lou Liebenau: Actually, we're a new organization but the members of the organization are certainly not new to the industry. In effect, we have a wealth of experience in the industry as owners of horses and investors in the industry. The members of our association found it necessary, being integrity-minded and representing investors to hundreds of millions of dollars in the agriculture sector in Ontario, to have our own voice. We needed to have our priorities and initiatives up front and be known to the decision-makers—government. I think that in our short lifespan, these decisions have been found to be correct in our acceptance by the decision-makers in the industry and by the fact that we are here today. The investor needs to be heard and have his own voice. That's why we were formed.

Mrs. Maria Van Bommel: In your presentation, you talk about a number of initiatives and you talk about the use of the whip, the safety reins. What kind of work have you done as an organization on those particular issues?

Mr. Lou Liebenau: Dave? If you don't mind.

Mr. Dave Drew: Those specific initiatives I put down because of the interface with the Ontario Racing Commission. That's really, in those cases, what drove those. There were initiatives on the part of the Ontario Racing Commission in which we were invited to participate with them, so that's why they're listed. Our primary point is the Ontario Racing Commission is open to that. Nothing is perfect in those kinds of processes—everybody has opinions; there are going to be disagreements about what the end outcome of those will be—but at least we have a voice and we're at the table with participation in those types and other committees that come up related to the Ontario Racing Commission. So

they're open to the input; we're very pleased to be able to give them that input.

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Mrs. Maria Van Bommel: This morning we heard from the ORC about medications and the possibility of using a card. It's just like a vaccination card for people, and that would be attached to the horse and it would travel with the horse from one owner to another. I see that you're a member of the medications task force. Is that the kind of work that the task force is doing?

Mr. Dave Drew: The primary thrust related to medication relates to improper usage of medication as it relates to racing. That's an integrity issue for us. We compliment the Ontario Racing Commission on continuing to take strong action related to medication. They have an advisory group and one of our members is on that to give technical advice as well as practical advice about medication. Our view is that they should continue to raise the bar in terms of illegal use of medication. Recently, they have come out with new regulations related to steroids. We believe that's the right direction to go in order to protect horses and protect the industry.

Mrs. Maria Van Bommel: So the medication task force is really about illegal use of medication?

Mr. Dave Drew: That's correct.

Mrs. Maria Van Bommel: In animal agriculture, a number of livestock organizations have moved toward a sort of traceability: You record the medications that you use for the health of your livestock—not as an illegal performance enhancer. In the normal course of animal husbandry, you would use medications. This morning, like I said, I heard that there was this possibility of starting to record the use of those types of medications. What is your feeling on that type of thing, the same sort of thing that is happening in the rest of agriculture?

Mr. Lou Liebenau: One thing, if I may, that's very possible and easily done in horse racing: When a horse is entered to race, the trainer is designated on the entry form, the driver is designated, the owner is designated, and we strongly believe that the veterinarian for that horse should be listed on that entry form. That would give the opportunity for the veterinarian of record to be easily consulted so that he might be able to answer any questions the racing commission or anyone might have regarding the medication of the horse—which is very simple, one line.

Mrs. Maria Van Bommel: That's not being done at this time?

Mr. Lou Liebenau: I believe it's in one of the rule proposals; I'm not sure. We firmly believe that. It's part of the integrity part of the business, as far as we're concerned.

There was comment earlier regarding the additional investigators that the racing commission has. We believe that while any endeavour could be made better, could be better done, could be more aggressive, could be fine-tuned, we firmly believe in the increase in the number of investigators that the racing commission has. An example of the job that they are doing, another thing we firmly

believe in: the success of the out-of-competition testing. There are a number of horses that have been suspended for 90 days because of positive tests for performance-enhancing drugs, which disallows the owner of that horse to have income from that horse for that 90-day period and prevents the owner who would give that horse to another trainer whom he would deem would treat him the same way as the suspended trainer—so it prevents the moving around of horses to these kinds of trainers. The out-of-competition testing, I think, is supported strongly by the investigative process.

Mrs. Maria Van Bommel: Is that testing done at random? How would they decide whether to test the horse?

Mr. Lou Liebenau: That would be better answered by someone from the investigative sector. I couldn't really give you an accurate answer.

Mrs. Maria Van Bommel: Thank you.

The Chair (Mrs. Julia Munro): We'll move to Mr. Hudak.

Mr. Tim Hudak: Gentlemen, thank you very much for presenting on behalf of SHOP. My colleague Mr. Kormos threw in a boxing analogy, so I'll mix analogies too and note that horse racing in Ontario and Canada is sort of the big dog, with by far the greatest amount of wagering; I think the ORC says whereabouts 65% of total wagering in Canada as a whole. I don't know where we fit in North America. What's the view of the integrity of the sport and the job the ORC is doing in that North American context?

Mr. Lou Liebenau: I think the ORC is quite well respected, North America-wide, for its initiatives. Again, I'm not privy to the specifics of the consultation, of the interactions between commissions, but my perception would be that they're looked upon as doers, which is, I think, a good way to be perceived if you're supposed to protect the public and the participants in racing that operates within the rules of the racing commission, which I think is imperative that they protect.

Mr. Tim Hudak: You've been involved in the industry for how many years?

Mr. Lou Liebenau: Myself? Forty years.

Mr. Tim Hudak: In 2000, the ORC was given a greater mandate, a self-financing authority, greater decision-making ability in the legislation that was passed at the time. Did that improve their ability to govern the integrity of the product? Did it cause mandate drift, and so they've moved away from their original mandate? What's been the impact now, nine years since?

Mr. Lou Liebenau: I think currently, if you look at 2009, there has been improvement. I was on the OHRIA board representing OHHA in 2003 when Stan Sadinsky, the chair, and Jean Major, the executive director, came to OHRIA looking for additional funds for education of judges and upgrades and so on. I believe that is still a work in progress. As long as there's openness, as long as there's the ability to work and have cooperation, we at SHOP would like to look at the glass as being half full as opposed to half empty, and look at the prospects of working together and improving the situation.

Mr. Tim Hudak: Mandate drift has been a consistent theme with all the presenters this afternoon. You guys mention on page 7 of the report that you recommend "the ORC focus on its existing mission, vision and mandate and continue to do it well."

We also received a letter from the Canadian Thoroughbred Horse Society. Glenn Sikura is the signatory there; he's president. He brought up some concerns with TIP—is that the thoroughbred improvement program?—indicating that he thought the ORC is micro-managing it. For example, he says they tampered with the marketing program, changed the logo and such. Have you seen the same thing on the standardbred side?

Mr. Lou Liebenau: I think that the HIP program should be administered by the industry. As a matter of fact, there was a time when OHRIA administered the HIP program under the supervision of the racing commission. Basically, the ORC took it back.

Again, my involvement goes back to OHRIA during the days when I represented OHHA on the implementation of the slots program; I was there. I think that part of the problem that happened to OHRIA and diluted its capabilities of speaking for the industry was the fact that when the slots came in, everybody sort of ran and went home, and took it as OHRIA fulfilling its objective, and, "Now I'm going to look at my little kingdom all over the province," as opposed to—that was the start of the process, as far as I would see it.

Instead of OHRIA getting stronger and, because of its accomplishments, having the ability to run the HIP program etc., it faltered. I think that we're very much in favour of OHRIA coming back and being the voice for the industry and taking back some of the initiatives that belong within the industry.

Mr. Tim Hudak: Sikura goes on to say—I'll quote from his letter—"It is clear as well that the ORC has failed to recognize that the thoroughbred and standardbred industry, while similar, also contain many differences. Universal rules and regulations may simplify policy at the ORC but may not work for either breed." Is he accurate in that statement?

Mr. Lou Liebenau: It says a lot in there. I think the basics are very similar. I think people want to race their horses for the most money under the best possible circumstances. That's basically the similarity between both the breeds, I think.

I think that the thoroughbred industry—obviously Fort Erie and Woodbine, or possibly just Woodbine now—less than 200 race dates for the year for thoroughbreds, as opposed to well over 1,000 for standardbreds; tracks of all sizes, all availabilities; the number of race dates. This is what complicates the harness industry much more than the thoroughbred industry. That's where I would see the difference.

Mr. Tim Hudak: We'd certainly hope that Woodbine won't be standing alone on the thoroughbred side. The fate of Fort Erie was a good part of our discussion during the committee hearing today.

The racetrack owners' group had brought up a concern that the training and effectiveness of judges and stewards was not what it used to be, that the mandate has moved away from them. Is that your view? Do you think that the stewards and judges ain't what they used to be?

Mr. Lou Liebenau: I don't think it's any better; I don't think it's any worse. I think it's just ongoing and it's a work in progress. I think it will always be a work in progress for the racing commission to better itself, through the judges.

We view the judges as being the most important entity within the racing commission because they affect the conducting of the races on a nightly basis at tracks all over Ontario. The consistency of the judging, the fairness of the judging, is paramount, especially in situations where decisions are made that can be reversed on appeal. The bettors, whose numbers are shrinking, have lost their money on bad decisions. So proper decisions by the judges on a nightly basis are paramount to the future of the industry.

Mr. Tim Hudak: You have expressed a concern that the ORC is getting away from its basic mandate. Can you give some examples of areas that they're moving into that you would prefer that they did not?

Mr. Lou Liebenau: I think previous presenters have made points in that regard. What I really would like to do is just reassert our position that it keep to the main, core regulating aspect and the integrity, the viability, of racing.

I think there is so much to do because of the number of standardbred racetracks and the number of race dates.

We would rather have the commission do a really great job in three or four areas, as opposed to being spread too thin and doing a so-so job in 10 areas. We just talk about what's most important, as owners of horses.

Mr. Tim Hudak: So what are a couple of areas that you think the ORC should prioritize and strengthen to maintain the integrity of the sport in Ontario?

Mr. Lou Liebenau: It would be the upgrading of the judging. It would be the implementation of the rules. It would be the adapting of new rules.

We tend to be in a situation where the breakers of the rules—not to use as harsh a word as “criminals”—seem to get first, second, third and fourth consideration and have the appeal and have this and that, but the large majority, who are also licensed by the commission, seems to suffer. We want due diligence for everyone. But the large majority who play within the rules need to be brought into the forefront and need to be considered a little more, and perpetrators need to be dealt with more severely. We don't need them in the industry.

Mr. Tim Hudak: Thank you.

The Chair (Mrs. Julia Munro): Thank you very much for coming here today. We appreciate the time you've taken to be here with us.

That concludes the business of the Standing Committee on Government Agencies for today. I would just remind members of the committee that we will begin tomorrow morning at 9 a.m. Until then, the committee is adjourned.

The committee adjourned at 1503.

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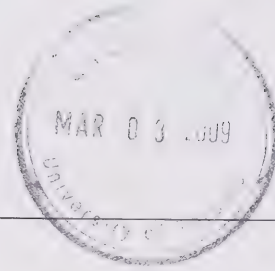
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Monday 23 February 2009

Journal des débats (Hansard)

Lundi 23 février 2009

Standing Committee on Government Agencies

Agency review:

Ontario Securities Commission

Comité permanent des organismes gouvernementaux

Examen des organismes
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Monday 23 February 2009

Lundi 23 février 2009

The committee met at 1303 in room 151.

SUBCOMMITTEE REPORTS

The Chair (Mrs. Julia Munro): Good afternoon, ladies and gentlemen. Welcome to the Standing Committee on Government Agencies. We are going to proceed with our agenda. Our first order of business this afternoon is the report of the subcommittee on committee business dated Thursday, February 12.

Mrs. Maria Van Bommel: I would move adoption of the subcommittee report dated Thursday, February 12.

The Chair (Mrs. Julia Munro): Is there any discussion? If not, all in favour? The motion is carried.

Our second order of business is the report of the subcommittee on committee business dated Thursday, February 19.

Mrs. Maria Van Bommel: I move the adoption of the report of the subcommittee on committee business dated Thursday, February 19.

The Chair (Mrs. Julia Munro): Is there any discussion? If not, all in favour? Opposed? The motion is carried.

AGENCY REVIEW

ONTARIO SECURITIES COMMISSION

The Chair (Mrs. Julia Munro): Our next order of business is the review of the Ontario Securities Commission.

Good afternoon, and welcome to the committee. As you may know, you will have 10 to 15 minutes in which to make any statements you wish. That will be followed by time for the committee members to ask questions and hear your responses. For the purposes of Hansard, I'd ask you to identify yourselves. You may begin.

Mr. David Wilson: As you may recall from my last appearance before the committee on December 2, I'm David Wilson, chair of the Ontario Securities Commission. Thank you for inviting us back to speak with you. I look forward to continuing our discussion and answering your questions about the OSC's mandate, goals and activities.

With me today on my right is Larry Ritchie, one of our vice-chairs at the OSC, and on my left, Peggy Dowdall-Logie, the OSC's executive director. Also in the room are four operational branch directors of the OSC: Susan

Silma, of the compliance and registrant regulation branch; Margo Paul, of our corporate finance branch; Leslie Byberg, of the investment funds branch, and Brigitte Geisler, of our market regulation branch. The operational directors are here, should you want details about the proactive steps the OSC has been taking in response to the recent developments in the capital markets. They'll also provide a more fulsome overview of the OSC's operational branches, should you wish it. We hope to have the opportunity to provide such details during the question-and-answer period.

Before we answer your questions, I thought it would be useful to provide you with an update since I was last here in early December. Although it has been just a few months, the ground beneath the economy and the capital markets has continued to shift, and the OSC has been quite active on several fronts. Of course, we all know that despite our hopes to the contrary, the state of the financial markets remains very challenging. Stock markets are testing new lows. Fostering investor confidence is an ongoing challenge in the current market environment.

The difficult conditions in the financial markets have had a substantial impact on the so-called real economy, and we recognize that the response to developments in the markets is a clear priority of both the Ontario government and those of you in the room today.

At the OSC, we're committed to doing our part, and we have been responding appropriately. With uncertainty in the markets, we're sustaining a level of high alert. We believe increased vigilance is necessary, both to provide protection to investors and to foster confidence in the integrity of our capital markets. These are both important parts of the OSC's statutory mandate.

We, of course, can't dictate the ups and downs of the capital markets, but we can, and do, work hard to foster fair and efficient markets. Here are some key parts of our response to recent developments in the capital markets.

We are more closely monitoring continuous disclosure filings of public companies, especially in the banking and financial services sector, as well as highly leveraged issuers—those with high levels of debt.

We completed a fact-finding review of money market mutual funds in Ontario.

We conducted a similar fact-finding review of exchange-traded, closed-end investment funds.

We just recently began a focused review of Ontario-based hedge funds to assess any unusual risks to investors.

These activities are all part of the OSC's compliance oversight that I talked about here in December. We initiated these extraordinary programs to determine whether any additional regulatory responses are necessary as a result of dramatic market developments.

We're vigilantly monitoring issuers of securities to check that proper disclosure is being made to their investors. We're doing everything possible to fulfill our mandate in this time of unprecedented economic uncertainty.

During these reviews which we're conducting, we've found reasons to be reassured that meaningful disclosure is being made about the challenges facing public companies and funds in the investment fund industry. Nevertheless, we remain alert for any signs of improper conduct.

On another front, an agreement has been reached for a settlement of the crisis in the marketplace for non-bank-sponsored asset-backed commercial paper—ABCP. The restructured notes were formally issued in January, following a closing of the restructuring on January 21. We're pleased that the hard work of the restructuring committee and investors produced a settlement, even though some investors do have concerns about it.

This agreement is the resolution that was carefully developed by the pan-Canadian committee following very complicated negotiations that lasted more than a year. The vast majority of retail investors in non-bank-sponsored asset-backed commercial paper have now been made whole, with interest, as a result of this agreement and other arrangements. Other holders of the ABCP notes will receive longer-term notes.

Generally, that's good news, but it obviously does not address the underlying regulatory concerns with respect to the sale of non-bank-sponsored asset-backed commercial paper in the first instance. We're doing our part in addressing that through our involvement in the Canadian Securities Administrators, the CSA, the umbrella group for securities regulators in this country.

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The CSA is moving forward with recommendations from its ABCP consultation paper to develop firm proposals to help prevent a similar crisis from happening again. Our ABCP recommendations are an appropriate and proportionate response. They include proposals to constrain the ability of issuers of short-term asset-backed securities to use an exemption that currently allows issuers of short-term debt to avoid having to provide full prospectus-level disclosure to their investors. The proposals also include the establishment of a framework to permit regulatory oversight of credit rating agencies, whose role we and other regulators around the world see as having contributed to what happened in structured products.

The proposed framework for rating agencies would require public disclosure of all relevant information used by them in preparing a rating on a security. This complements our proposed requirement that rating agencies comply with a code of conduct prepared by the

International Organization of Securities Commissions, known as IOSCO. The OSC provided substantive input into IOSCO's code of conduct for rating agencies.

Recognizing the dynamic nature of the rating agency industry, we have also recommended that we securities regulators be given the tools to actively regulate and impose requirements on credit rating agencies in the future.

These and other changes would provide more disclosure, making such complex investments more transparent to investors and market participants. Disclosure and transparency are fundamental to the OSC's approach to regulation.

The public comment period on our ABCP proposals in the consultation paper ended just last week. We will be assessing those public comments shortly and will then develop our final proposals.

Another development in the past few weeks has been the report of the Expert Panel on Securities Regulation in Canada. On January 12, the panel delivered its final report as well as a draft securities act to the federal Minister of Finance. The panel's central recommendation is the establishment of a single national securities regulator.

As you know, I am on record as fully supporting the position of the Ontario government and our minister regarding a common securities regulator. So, not surprisingly, the OSC welcomes any step that takes Canada closer to the goal of establishing a single regulator enforcing a single securities act and charging a single set of fees. The federal government has proposed to fund a transition office that is now preparing the groundwork for a new Canadian securities commission.

The chair of the panel, Tom Hockin, wrote in the report that Canada's current regulatory structure is costly, slow and confusing. Importantly, he notes, "In today's increasingly interconnected economy, how Canada organizes its own capital markets matters not only to Canadians but to the world ... investors will not tolerate outdated, cumbersome or duplicative systems. If Canada is to realize its potential in the global economy, the regulation of its financial markets must be among the world's best."

The OSC agrees with this statement and is prepared to assist in making that goal a reality.

I can also report some important developments from the OSC's enforcement and adjudication activities. One example is the Research in Motion settlement agreement regarding the backdating of stock options. The focus in this settlement was on ensuring that the company is and remains compliant with Ontario securities law. We also wanted the company and its shareholders to be made financially whole. The settlement also required that the corporation, RIM, submit to an independent review of its corporate governance practices and procedures.

The OSC tribunal stated that it hopes that RIM, and indeed all public companies, understand the importance of strong corporate governance. We believe that in the RIM case the OSC applied balanced sanctions where

they were most appropriate. What the tribunal did by approving the settlement was send a strong message that abusive conduct will not be tolerated.

Another recent and high-profile enforcement action was the sentencing of Barry Landen. In October 2008, following an OSC investigation, Mr. Landen, a former senior executive of a mining company, was found guilty of insider trading. In January of this year, the Ontario Court of Justice sentenced him to a 45-day jail term and a fine of \$200,000. This is a significant verdict. It sends a strong message of deterrence against insider trading.

A third example in the enforcement area is the decision of the OSC—this is not really enforcement; it's more policy; excuse me—tribunal in relation to the treatment of shareholders of HudBay Minerals in connection with a contested proposed takeover. In January, the OSC tribunal reviewed a decision of the TSX and required that HudBay hold a shareholders meeting to vote on its takeover bid for Lundin Mining Corp. At the time of issuing its order, the OSC panel commented that fair treatment of HudBay shareholders must take priority, and that permitting the transaction to proceed without shareholder approval would adversely affect the quality of the marketplace and be contrary to the public interest.

I can also tell you that we have recently appointed a new director of enforcement at the OSC. His name is Tom Atkinson and he has extensive experience in securities regulation, enforcement and litigation. We selected Tom after a comprehensive search for a candidate who could bring not only the relevant litigation tools to the OSC but also vision and leadership. We're very pleased to have him join our team. Tom is respected for the commitment he brings to providing protection to investors and fostering market integrity.

In each of these cases I've cited, the OSC has sent a clear and unmistakable signal to investors and capital market participants: We will work relentlessly to provide protection to investors from unfair, improper or fraudulent practices. We will foster fair and efficient capital markets. And if a company or an individual acts contrary to Ontario's securities legislation, we will take action. As you've heard, we have taken action and we intend to keep making progress to make securities regulation in Ontario even better.

We can't make the markets of the broader economy recover, but we can foster the fairness and efficiency of capital markets, and foster public confidence in those markets.

Thank you for your attention, and now myself and my colleagues here at the table or those sitting behind would be happy to answer your questions.

The Chair (Mrs. Julia Munro): Thank you very much.

Just for the benefit of committee members, we're looking at just over 30 minutes per caucus. I'll divide it, then, with some balance given to the first round—a little more time for the first round than the second. Mr. Prue, are you ready to begin—

Mr. Michael Prue: Oh my goodness, yes. I had forgotten a couple of my papers there; I had to run out and

get them. I guess I can go right away. I didn't know I was first.

The Chair (Mrs. Julia Munro): Yes, you are.

Mr. Michael Prue: My questions that I have written down here, thinking about them—the OSC is seeking to fill three part-time commissioner positions. The advertisement says the OSC is looking for somebody with management or leadership experience with a corporate issuer, an investment dealer or significant experience in securities litigation or adjudication. I put it to you that every one of the OSC's existing 13 commissioners has that experience. The OSC's senior management is comprised of two investment bankers and two Bay Street lawyers. You have an incredible opportunity to appoint a retail investor. Why haven't you done so?

Mr. David Wilson: The OSC has a board, and the board has a corporate governance committee. So the process you've described of posting openings for new commissioners is overseen by that corporate governance committee, which is a subcommittee of the board at the OSC. What the governance committee started doing three or four years ago, I believe, was to create a matrix of skill sets required for commissioners to fulfill their multifaceted roles that they have as commissioners of the OSC. Many of you may know this, but I'll describe the basic functions of an OSC commissioner: Commissioners meet twice a month for four hours to review new policy initiatives and revisions to existing policy initiatives. So there's an element that's very similar to passing new laws or discussing the creation of new laws that affect capital market participants, all of which is subject to the approval of the minister, of course, but all the development work is done around the commission table with the assistance of staff. So that's one function.

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Another function of commissioners is to sit as adjudicators on enforcement cases, and I described some recent cases to you this morning in my opening remarks.

What I'm trying to portray, Mr. Prue, is a very thorough and rigorous process to bring people with the very sophisticated skills needed to do the job of an OSC commissioner. Sitting as an adjudicator, developing new policies, and understanding the complexities of new policies and their impact on the marketplace and market participants is a job requiring significant specialized expertise and skills. So our governance committee, which is all made up of part-time commissioners—none of us at the table here are involved—has created a matrix of required skills: accounting skills, adjudicative skills, skills as an issuer or experience as an issuer etc., and some of our existing commissioners do have experience as investors as well. I'm giving you a long-winded answer, but what I'm trying to say in answer to your question is that we have a very robust, thorough process at the commission to assess the skills needed to do the job that we are mandated to do under the statute.

The final point I'll make is that, of course, the commissioners who come forward through the Public Appointments Secretariat process are screened and reviewed

by our governance committee, but ultimately the minister makes the decision and the cabinet makes the appointment.

That's the process and that's the thinking behind the matrix of skills that we require to do the job which the act requires of us.

Larry Ritchie, do you have any comments to add to that?

Mr. Lawrence Ritchie: The only thing I would like to add is that we have had discussions at the board level, and I can assure you that experience with and sensitivity to retail investor issues is certainly a criteria that the nominating committee will take into consideration within the skill sets that form part of that matrix.

Mr. Michael Prue: I've heard all that, but I have to take it that in your opinion, or in the opinion of the board, if you don't share it: A retail investor representative wouldn't have the necessary skills set.

Mr. David Wilson: There may be somebody out there. If they have the skills, they should apply. Absolutely, they should. It's an open process. The public appointment process, in Ontario, in my personal opinion, is a very open process and anyone can apply. One of our recent commissioners that we recruited in the last round applied spontaneously on her own. Her name is Paulette Kennedy. She was a superb candidate. Our governance committee thought she was a superb candidate. The minister liked her candidacy, so she went to the cabinet and she was approved. The process is very, very open.

Interjection.

Mr. David Wilson: If I could just interrupt for a second, Mr. Prue, Peggy Logie would like to correct a statement you made about her background.

Ms. Peggy Dowdall-Logie: Yes. I'm not sure whether you made it about my background—

Mr. Michael Prue: Oh, I have no idea—I don't even know who you are, so go ahead.

Ms. Peggy Dowdall-Logie: There was a suggestion that of the four executives, two were Bay Street lawyers and two were former investment bankers. As we know, David Wilson is a former investment banker. I am not a former investment banker. I'm a lawyer. I've spent most of my career in compliance/regulatory risk. This is my third time at the OSC in the policy area.

Mr. Michael Prue: Okay. I had no idea. The statistics that I had did not include your name. It said that of the 13—

Ms. Peggy Dowdall-Logie: Four.

Mr. Michael Prue: Four. So there are nine others.

Mr. David Wilson: Three of the four are here. The fourth is missing; he's a Bay Street lawyer. So we've got a Bay Street lawyer. The one that's missing is a Bay Street lawyer. You've got an investment banker. Peggy's correcting the record on her own background.

Mr. Michael Prue: All right. Let's go to the Bay Street lawyers and others from Bay Street. There's a widespread belief that the OSC represents corporate Bay Street interests and not the everyday retail investors. It is those everyday retail investors that we keep seeing in the

newspapers, we keep seeing on the television programs and everything else, who are being hammered and hurt. I don't see many Bay Street lawyers and Bay Street interests out there losing their shirts. Maybe they are, but I don't see that on television.

Mr. David Wilson: We can certainly take you on on that allegation, but retail investors—let me back up, and, Larry, you may have something to say. We have established, with the approval of our board, four principal goals for the operation of the OSC. One of them is protection of investors, including retail investors. Everything we do at the OSC has, at its core, investor protection of one sort or another—not necessarily just retail investors; all investors: institutional investors, global investors and small individual investors. They all form the universe of investors. We think that our commissioners and our goals are all focused in the right direction vis-à-vis investors, including retail investors.

Mr. Michael Prue: Would it not assuage the fears and the concerns of the retail investment community for the OSC to reach out and say quite simply, "It's time for a real retail investor representative," so that that community would say there was somebody who understood their particular concerns, who had knowledge and who could plug into the system? There are 13 commissioners. Surely to God one could represent the interests, or at least be knowledgeable of the interests, of that separate community without throwing the whole thing into turmoil.

Mr. David Wilson: I've discussed the notion of having constituencies represented on the board with the chair of our governance committee, anticipating that someone may ask this question of us today. The chair of the governance committee, and I believe she reflects the views of the governance committee, does not believe that the Ontario Securities Commission should be populated with representatives of specific interest groups. It should be a cohesive board to perform all the complex functions that the OSC is mandated to perform under the act, with multiple skills to deal with the complex functions, and various constituencies should not be represented in clumps around the board table. That's not me speaking; that's the chair of our governance committee.

Mr. Michael Prue: But almost every board in Ontario, almost every board and committee set up by the government in no matter what government department or agency, has people on it who serve, bring their own knowledge and skills sets. The skill sets can be very different. Nobody's asking for, nobody even wants, a homogeneous board except the OSC. I'm at a loss to understand why that's the rationale.

Mr. Lawrence Ritchie: Chair, let me wade into this. First of all, in one of the comments that you made, you suggested that there should be a representative of a separate community of retail investors. I don't believe there exists a separate community of retail investors. I believe that all of us are retail investors. We're all consumers. We have different skill sets. We have different backgrounds, and I think that the responsibility of board members and commission members is to bring their

experiences and their perspectives to the table with due regard of the statutory obligations of ensuring that investors are protected and that confidence is maintained in the public market. The concern, and I agree with your underlying premise, is you cannot do that without due regard to one of the most vulnerable classes in our society that we have to look after, and that is retail investors. From that point of view, we expect ourselves and all commissioners to bring that perspective to the table.

The other thing: Within the three areas that the board is looking for to fill its complement of commissioners, one of them is someone who has the skill sets—and you're quite right that it's not necessarily the perspective; it's the skill sets—to have a litigation or adjudicative background so that they can chair panels of the commission. That person need not be someone with Bay Street experience or corporate experience. That person, for example, could fill the very position that you're looking at. I would think that there are lots of lawyers out there who have represented the interests of retail investors and other consumers who could bring that perspective to the table, but also meet the threshold of the skill sets that the board is looking for to adjudicate and chair panels.

I don't see the inconsistency, in terms of the three areas that are being looked at, in representing and filling the position of the retail investors. As David mentioned, if there is someone with that skill set, the board is very open and anxious to see the resumé of that person and will put them forward if they have the requisite skill sets.

Mr. David Wilson: Just for the record, the Public Appointments Secretariat process is open until the end of February, and so anyone who has some of the background interest that you referred to is free to submit their name.

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Mr. Michael Prue: How much time do I have left?

The Chair (Mrs. Julia Munro): You have about five minutes.

Mr. Michael Prue: Five minutes? Okay. I'm going to go on to a slightly different topic, then, in the five minutes remaining.

In November 2005, the OSC created the investor advisory committee—the IAC—following a successful investor town hall initiative. The OSC said this about the committee: “We believe that effective communications with the stakeholders who are affected by our actions is an essential part of the regulatory process and helps us ensure we achieve the appropriate balance between protecting investors and fostering efficient capital markets.”

Mr. Wilson, you were quoted in a statement—and I quote you directly—saying this: “IAC members will help identify and address issues affecting investors and ensure that the views of consumers of financial services are accessible to the commission.”

The committee met for two years. In May 2008, a trade publication said that the OSC decided not to continue with the investor advisory committee, saying it had

“run its course.” This was a surprise to all the members. Why did the OSC determine they needed to shut down the investor advisory committee?

Mr. David Wilson: The investor advisory committee, as you quite accurately point out—you characterized it as a successful town hall meeting. It was created with a two-year term, so there was no sudden termination. It was created with a two-year term at the time, and members were recruited for the committee. It was a very productive, active two-year period; lots of good ideas were forwarded and lots of discussions were held. We felt at the end of the two years that we should take a pause and decide if there was an improvement in the way we could get input from retail investors. At that point, Larry Ritchie got quite actively involved in creating a new body, but why don't I pass the baton to you, Larry—describe what happened after we decided to move from the two-year term of the original investor advisory committee to what you're now doing.

Mr. Lawrence Ritchie: One of the things that we learned in the course of the investor advisory committee is that the concerns of retail investors transcend just the Ontario Securities Commission. It involves, for sure, the Ontario Securities Commission, but it transcends it because of our system of SROs and also other complaint-handling processes.

What we felt we needed to do was for all of the organizations in Ontario that deal with retail investor issues to hear the same things from the same group of retail investors and to be in a position to have a coordinated and coherent approach to retail investor issues.

So we created a joint standing committee of the executives from the Ontario Securities Commission, the IIROC, which is the self-regulatory organization for investment dealers, as well as the MFDA, which is the Mutual Fund Dealers Association. As well, we asked our fourth partner to be OBSI, the ombudsperson for financial sectors. So the four organizations—three of which are national, and the Ontario Securities Commission—got together. Basically, we are not meant to talk to ourselves on issues that we raise ourselves, but rather, we are trying to brainstorm on issues to better facilitate getting input for retail investors. We've already had a consultation with investors on product suitability, which we thought was timely, in the fall. We started with a questionnaire and then we had a conference call with interested persons, and we issued a report on the input from that. We're also moving to the next stage of consultations, which will take a different approach. We're looking at a broad-based survey of some of the issues that are of concern with retail investors. Again, we will try to make that as broad-based and inclusive as possible.

One of the things that you mentioned was—I forget the wording that you used—that the committee was terminated. As David said, the term had expired. One of the things that we are talking about in the context of the joint standing committee is a more effective or the most effective way to have ongoing input from retail investors. We have not closed the door to opening up a replacement

committee for the retail investment community. We are very much aware that the Hockin committee report talked about a consumer panel or an investor panel. I know there has been a lot written about consumer panels. Many of us are quite taken with the idea, and we're exploring whether it can work as an Ontario-only initiative, whether it can work as a securities-only initiative, and, if it's better to get broad-based input from consumers dealing with all financial products, how best to facilitate that.

So we're very open. The very issues that you have raised, Mr. Prue, are exactly the issues that we're talking about in the context of the joint standing committee.

Mr. Michael Prue: I would gladly be persuaded, but the joint standing committee on retail investor issues does not have a single retail investor voice. It is made up of several self-regulating organizations. So you've taken this investment retail committee, the one that existed for two years; you've more or less shoved it aside—or however you want to describe it—you've taken none of the people who were part of that who are part of the retail investment community, and you have set up a new joint committee that does not include them. Then you're saying that you're studying whether or not they should be included. I don't understand an inclusive process, and I don't understand that whole investment community that now suddenly feels left out. Obviously they're angry and obviously they don't think their voice is being heard, and the actions give some considerable credibility to that.

Mr. Lawrence Ritchie: We have not replaced the investor advisory committee with this body, as I mentioned. This body that's in existence, the joint standing committee, is meant to be an organization to facilitate a broader dialogue. If people are angry and feel they've been excluded, then it is absolutely a problem and we have got to roll up our sleeves and rectify that situation. I think that's what we're trying to do. We have to find a better way of getting some input.

So we're open for suggestions. We're talking directly to retail investors about how best to engage them and to find a more permanent mechanism to receive input from that perspective, from the retail investor perspective.

Mr. Michael Prue: Wouldn't it start by just putting one or two people on the joint committee?

Mr. Lawrence Ritchie: The committee is a committee of executives of regulators. The idea of the committee is to hear from the same group of people. One of the things that we can do—and we're doing it through surveys, focus groups, consultations. You're suggesting that people should come in and talk to us and be part of the dialogue. We're trying to find the best means of doing that. But I take your point. That is exactly what we are doing, and if people, as I said, are feeling excluded, then it's clearly something that we have to work hard to remedy and get that input and that feedback as a top priority.

Mr. Michael Prue: Is my time up?

The Chair (Mrs. Julia Munro): No, you have a couple more minutes.

Mr. Michael Prue: Oh, my goodness, I'm doing well, then. How long is this going to take you, then? How long is it going to take before some kind of decision is made that will include this investment community, which was welcomed in, had a two-year stint and was sort of removed? How long is it going to take to get them back in?

Mr. Lawrence Ritchie: I'm going to have to take issue with the fact that they were removed. They went through their two-year term. They got a great deal of very constructive input. By the way—and this predated me—my understanding is that the recruitment process for composition of the committee was a very rigorous recruitment process. So it became apparent that if there was going to be a reappointment in that form, there had to be a real tight examination about what criteria should be used for having that input. So in the face of that regime, that committee process concluding, we decided to bring all four major organizations together and talk about how to broaden the exposure to the retail investor concerns to all four constituent elements. So that's exactly what we're looking at right now.

In terms of the timing, we're working—and I'm turning to my colleague—as we speak towards a further consultation, a further survey that could lead to focus groups on the very issues that we're talking about. The Hockin committee report has come out.

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Remember, we are just a provincial—I don't mean “just”—but we are a securities regulator in the province of Ontario, and retail investor issues transcend provinces. We've seen that many of these issues transcend national borders. We're talking about whether it's more effective to have some kind of national organization with three other partners that are national organizations. We're also looking at specifically whether we should limit the involvement of retail investors to just securities. There are other financial products out there. We are raising these very issues in another organization we're involved in, the Joint Forum, which is a national organization of securities regulators, pension regulators and insurance regulators, to see if that is the most effective mechanism to move towards broader input on a consumer level.

So these are complicated issues. It involves a lot of discussion with various players in the market to, hopefully, get their participation in the process.

Mr. Michael Prue: I need to ask this question, because this is still troubling to me. The investor advisory committee was described by Mr. Wilson as being an essential part of the regulatory process. All of a sudden, it was said it had run its course. Today you're telling me they did a good job?

Mr. Lawrence Ritchie: Yes.

Mr. Michael Prue: But they're not being appointed, and you're going off to study it some more. So I don't understand—

Mr. David Wilson: Let me try to explain a little bit about how the system works, Mr. Prue. The retail investors, when they are touched by the system, are not

directly touched by the Ontario Securities Commission. When retail investors get involved in the system of investing securities, their point of contact is through a registered investment adviser. Registered investment advisers are regulated by IIROC, the self-regulatory organization for investment dealers. To really have a forum where retail investors' issues get to the core of who regulates investment advisers, IIROC has to be in the tent. In the original incarnation of the investment advisory committee, there was no IIROC formally sponsoring it; it was strictly an OSC-sponsored advisory committee. If the advisory committee is going to have its ideas land on fertile soil, it should have the IIROC people listening to it. They regulate the brokers; we don't. We oversee IIROC, but they do the regulation of the investment advisers at the ground level.

Larry has described that the standing committee that he has created includes the self-regulatory organizations. How those groups then maximize the input of investors is what is being studied right now.

The Chair (Mrs. Julia Munro): We'll move on to Mr. Flynn.

Mr. Kevin Daniel Flynn: Thank you for your appearance here today, Mr. Wilson and your staff. Thank you for the information that you were able to provide.

At the last meeting, I asked you to bring me back some information or to send us all some information on where you saw us ranking in the world when it came to the protection of people who decide that they'd like to get into investing. You actually had put us at number 5, or I think the World Bank had put us at number 5—somebody decided we were number 5 in the world.

I suppose, looking at it from the view of an ordinary Canadian who maybe five or 10 years ago probably had some savings and maybe had some investments but maybe didn't even know that the OSC existed, all of a sudden your organization has become a very important part of their life and something that they're very interested in and something that has had a profound impact on their life in some respects.

I'm framing all my questions as—if you look at a retail investor who wants to have confidence in the market and wants to know that somebody is out there looking out for them. When you look at an annual report, for example, and you see that the financial statements are in there and you go through them and then you get into the fluff—into the glossy photos and the bios of the directors and the latest product and all the other stuff that makes up the other portion of the annual report—is there any way, or has any thought ever been given by the OSC, to include other information in a mandatory nature in the annual report that would be of more use to an investor than the president holding the latest weed whacker or the newest toothbrush or something like that; something that actually gave you some information?

I'm thinking specifically, as an example: Why wouldn't it be mandatory to include a basic set of financial ratios? I know that they're not the be-all and the end-all, but it's something that an investor could sink

their teeth into a little bit and say: "This means something. This is something that I can start to gauge as to whether this company is profitable, whether its leverage is fine, whether it's liquid."

Why do we have so much fluff in annual reports and limited hard data?

Mr. David Wilson: I have a couple of responses. You're right: Last time, we did talk about Canada's ranking, and we did submit to the clerk the details of the rankings. I can confirm Canada's fifth ranking in the world. I've got that letter here.

The statutory required content of annual reports versus what you characterize as the fluff: We have rules and regulations that have mandatory contents of annual reports. You've asked about broadening it. What I'd like to do is bring Margo Paul, who is director of our corporate finance branch—her branch spends most of its time looking at company filings, annual filings of financial information—and let her give her view as to additional information that might be useful to investors in addition to the formal financial statements and the pictures and those sorts of things that you've characterized.

Mr. Kevin Daniel Flynn: That's great. Perhaps you can answer something else, then, while you're in the seat. I understand that in the fall of 2004 the SEC in the States started to publish its own comments on the filings of companies, on the financial statements, as I understand it. Are we doing the same thing in Ontario?

Mr. David Wilson: Margo, could you handle Mr. Flynn's questions, please?

Ms. Margo Paul: Yes. I'm going to start with your last question. No, we are not publishing our comments. The SEC published their comments as a result of a freedom of information request that they received, and they publish their comments a fair time away from when they actually issue them, and that's—

The Chair (Mrs. Julia Munro): Excuse me. I'm sorry to interrupt you, but just for the purposes of Hansard, could you tell us who you are?

Ms. Margo Paul: Margo Paul. I'm the director of corporate finance at the OSC.

The Chair (Mrs. Julia Munro): Thank you.

Ms. Margo Paul: There's quite a significant time lag between the actual comment period and when the comments go up on their website, and the reason for that is a concern that sometimes we might be asking questions where the tone of our question indicates that there's something wrong when there really isn't something wrong and there's a good explanation for it. We don't want to be in a position where companies and their investors, quite frankly, are hurt by questions that we may ask or the dialogue that's going on until it's pretty much finished and any actions that are to be taken have been taken.

That being said, though, if a company is required to respond in some way to the public by virtue of our reviews—for example, if they have to do a restatement of their financial statements, and we got, I believe, over 100 restatements last year—the company goes on what's

known as our errors and refilings list, which is on our website, and it indicates what the problem was and what the solution was, and the company stays on that list for three years.

To get to your first question, I can talk a little bit about annual reports. The requirements for continuous disclosure, which is the ongoing disclosure that is issued by companies, are set out in our rules. Most of the detailed disclosure is described in the company's annual information form, actually. One of the things that's probably most interesting to investors—two things, actually; one is the financial statements. We feel that they're absolutely central to the investor's understanding of the financial health of the company.

The other area is called management discussion and analysis. MD and A is management's interpretation of their financial results. They talk about their liquidity situation, they talk about future prospects, and we are quite strict about MD and A not being able to be boilerplate. It really has to advise the investor as to how the management feels about the condition and the future prospects of the company. So I think that's an area that is not fluff and should be focused on.

There are parts of annual reports that are not regulated, and you will get the picture of the latest plant and that sort of thing. But there is a lot of really good regulatory information in there.

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As for ratios, it's an interesting point. We know that analysts in particular run a large number of ratios and do a tremendous amount of analysis of the financial information. As far as what the company does, in our view, the actual plain language at the MD and A is probably more helpful to the individual investor, but I take your point. I think it's an interesting idea.

Mr. Kevin Daniel Flynn: There was some news that came out of Europe over the past day or two that I think would be of interest to your organization. What they seemed to be saying was that they plan to take some action in the European Union that would put them out of step with the North American securities regulators and, I guess in the average investor's opinion, would put them in a better position. It seemed to me that the media reports that I've seen on this were saying that a European investor, were this to happen, would be protected more thoroughly than a North American investor. Would you agree with that or not?

Mr. David Wilson: There are many initiatives going on in Europe. Which specific initiative are you referring to?

Mr. Kevin Daniel Flynn: Okay. This is the one where European Central Bank president Jean-Claude Trichet called for a coordinated international framework for regulating hedge funds and credit rating agencies.

Mr. David Wilson: Yes. The hedge funds and credit rating agencies are two important players in the financial crisis that have been getting a lot of attention. The European Union has proposed legislation to regulate hedge funds in Europe, and this recent announcement is that

there's an appetite in Europe to regulate hedge funds more closely as well.

There has been a huge amount of discussion about the causes of the financial crisis, and in particular, the roles of these two organizations. Hedge funds and credit rating agencies have occupied a lot of discussion. Larry Ritchie and I were in Washington last Monday at an IOSCO all-day meeting, and we spent two hours at least, maybe a bit more, talking about the regulation of credit rating agencies and the regulation of hedge funds. Over 100 countries are members of IOSCO. But the SEC was at this meeting, as were the European countries that are involved in this proposal or that are part of this proposal. So there's a huge amount of discussion going on.

There will be regulations, as I said in my opening remarks, of credit rating agencies in Canada. We have a regime in place right now for the regulation of hedge fund portfolio managers in Ontario. There are different regulatory regimes in different parts of the world.

I think your general statement that Europe is moving in a direction to give European investors greater protection from the risks of hedge funds is too broad a statement, and we can talk about exactly what the hedge fund regime is in Ontario if you wish. But the broad answer to your question is that there is a lot of thinking going on globally on regulation of rating agencies and hedge funds, and what lessons there are from the financial crisis and what further things should be done to regulate those two big, important groups.

I don't know if that covers your question, Mr. Flynn.

Mr. Kevin Daniel Flynn: I think it does. I'm sure there'll be a variety of opinions on this issue, as you can imagine.

There's been a lot of talk, too, out of the federal government, as well as ourselves—certainly, firm resolve from this government—to see a common securities regulator for our country. There are still a few provinces that don't think that's a good idea. Could you give us your opinion as to why it's a good idea, why Ontario should be part of a common securities regulator, and what that would mean to enhanced protection for the average Ontarian who chooses to invest?

Mr. David Wilson: Sure. In my opening remarks, I quoted from the Hockin report, which was a pretty punchy summary of why Canada could be a modern, efficient capital market attracting capital from around the world. It should have a modern, contemporary securities regulatory structure. It has been said a number of times that no country in the world has a fractured securities regulatory structure like Canada, a small country with 13 securities regulators. It just doesn't make sense on the very surface of it, and there are lots of reasons below the surface why it doesn't make sense as well.

As I said back in December and I'll say again today, we are, at the OSC, very supportive of the proposal for a national securities regulator in Canada. We support the current minister's view on it and we supported Gerry Phillips when he was quite involved in this file before. We've told the Ministry of Finance that we're ready and

willing to do whatever work is required to assist in the analysis of how a transition could occur.

As to how investors might be better protected by a national securities regulator—I think that was the second part of your question—Larry, that's a broad question. Do you have any thoughts on that?

Mr. Lawrence Ritchie: I think, as I tried with my answer to respond to Mr. Prue's question, there's a lot of work that is done currently. I think we do it well, but it's a lot of work to coordinate the efforts and avoid duplication and try to reach a common standard of protection across the country. But we do it through our coordination with other regulators, and obviously any move toward greater harmonization will ease that workload and allow us to devote more attention to the problems at hand.

As I said, we work with the system we have now to do it. We probably could do it more efficiently if we didn't have a fragmented regulatory system.

Mr. David Wilson: At a minimum, things take longer to conclude when you've got to consult with 13 other bodies if you're going to put in a new disclosure regime or a new investor protection plan for certain aspects of the system. So if nothing else, a national regulator would get things done more quickly. As Larry said, the output could also potentially be of a higher quality.

Mr. Kevin Daniel Flynn: When the commission decides that it's going to go to the step of issuing a freeze order, how is that step arrived at? What criteria do you go through to reach that, and what does that actually mean? How does that protect an investor? What does that mean to an average person?

Mr. David Wilson: Larry, you're the lawyer here. Are you comfortable answering Mr. Flynn's question on freeze orders? I have an answer, but you're probably better equipped.

Mr. Lawrence Ritchie: I'm not sure about that. But I can tell you from the adjudicative side because, as you all know, the OSC is an integrated organization, and the commissioners play a role as a policy adviser as well as an adjudicator. Being that we issue the freeze orders, I can tell you what goes into that. What we're looking to when matters are brought to us in terms of freeze orders is protecting the public, protecting investors on a going-forward basis.

We're presented with some evidence that says that certain harm could come to investors if assets aren't frozen, and from that point of view, we exercise our public-interest jurisdiction to make sure that on a going-forward basis, investors are fully protected. So if evidence can come to us and we can issue a freeze order to ensure that assets are not dissipated, then investors are adequately protected, in comparison to an order that is made to punish or to stop certain activities from happening in the future.

Mr. David Wilson: An example is sometimes worth 1,000 words, Mr. Flynn, so just allow me to use an example of a freeze order in a very high profile case of a few years ago. Portus is a name that many people know as a large mutual fund operation; \$700 million was raised

from the public. Based on a call that we got from the compliance group and a fellow provincial regulator, the Ontario Securities Commission put a freeze order in and froze the assets of Portus based on preliminary evidence, as Larry said, to prevent the assets from being dissipated. Then a fulsome investigation and a long series of steps have happened with Portus, including criminal proceedings.

The net result of the freeze order, though—or it was a contributor to the final result, which was just announced a few weeks ago—is that investors in Portus are going to receive in excess of 92% of their original investments back, because the assets were frozen and protected from dissipation while the investigation and the criminal proceedings in this case ran their course. So it can be a very, very effective tool in protecting investors.

Mr. Lawrence Ritchie: I should say, when we're talking about freeze orders as a broad statement, the freeze orders that come to the Ontario Securities Commission are really freezing assets that are in the hands of the people we regulate, the registrants. The other freeze order, like in the Portus situation, is something where staff proactively go into court and ask the court to make an order to freeze the assets. So there are two—or more than two, probably—mechanisms by which to do the same thing. I think the OSC enforcement staff are very proactive in making sure that the appropriate steps are taken in the particular circumstances.

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Mr. David Wilson: We just happen to have some numbers for freeze orders this year, just for the record. Peggy, could you give those?

Ms. Peggy Dowdall-Logie: Yes. For the 10 months ended January 31, we issued 15 freeze orders totalling approximately \$23 million in assets, and 13 interim cease-trade orders, which are similar kinds of tools, affecting 38 corporations and 58 individuals. For us, it's a very productive and useful tool.

Mr. Kevin Daniel Flynn: Thank you. You mentioned registration reform, as I think you referred to it, as a tool that you thought would do some good for some people in these days. Can you explain that a little bit more? Could you expand on that a little bit? What benefit is that for me as an investor?

Mr. David Wilson: Sure. I'll try to make this as understandable as possible because the registration reform project is the largest single project that has ever been undertaken across the Canadian Securities Administrators. It's a big, complex product to streamline and modernize the whole registration system in Canada.

Susan Silma is with us today. She's the director of the compliance and registrant regulation branch. Susan, if you could come to the table; I'll just make a couple of other brief remarks and you can elaborate for Mr. Flynn on what registration reform is, in as simple terms as you can describe it, and how it will benefit investors directly and indirectly.

Ms. Susan Silma: Hello; my name's Susan Silma. I'm the director of the compliance and registrant regulation

branch. We register and oversee the conduct of securities dealers and advisers that investors rely on.

We find that investors are relying increasingly on registered securities dealers and advisers when they're making investment decisions, but the rules governing these registrants are really fragmented and out of date, with 13 different sets of them across the country. Two years ago, we published for comment a new registration regime. This is the so-called registration reform project. Its objectives are to harmonize the many disparate rules across the country on registration that exist today in each province.

We also wanted to streamline the rules to create a more efficient business environment, which results in cost savings for the industry but ultimately for investors as well. We also wanted to modernize the rules to bring them up to international standards for industry conduct and investor protection. One of our objectives was to have the outcomes more clearly set out. Some people call this principles-based regulation. This is a proposal that takes principles-based regulation and balances it with some very specific rules that we believe are necessary on the registration side.

We also wanted to have more clarity around how the registration requirements applied and what our expectations were. These requirements overall will be more comprehensive and will allow us to more effectively regulate participants in the industry. We would have an expanded regime that would capture, for the first time, investment fund managers who manage mutual funds and similar retail products.

We're also trying to improve our oversight of the exempt market. We're doing it in a way that's mindful of the importance of doing all we can to foster capital-raising, particularly for small companies, while still protecting investors.

Securities regulation is always about fostering fair and efficient capital markets, but we're trying very hard to balance our role to provide the platform for capital formation which is going to fuel economic growth but to do all we can to ensure that individual investors are protected.

Mr. David Wilson: That's a very brief tour of registration reform. It's a massive project, but any further questions, Mr. Flynn, feel free.

Mr. Kevin Daniel Flynn: Just moving off that topic and back to a previous one: When I asked a question about financial statements and whether we could have some more information included on a mandatory basis that was meaningful, the answer was that a lot of that information is included in the MD and A. What happens if I make a filing and, as a manager, I put information in the MD and A that you don't agree with or you think is faulty or you think that I'm maybe overstating my case? What steps follow? How is that corrected?

Mr. David Wilson: I'll begin an answer, but again, if you'll allow me to invite Margo Paul to come up—she's the expert in this. She, I am confident, knows exactly what happens when there's something in the MD and A

that we think may be misleading or inaccurate or inappropriate for management to say about their financial results.

Ms. Margo Paul: I'm just going to pull back a bit and tell you a little bit about the branch. That will give you a sense of how this all fits together.

The corporate finance branch is responsible for the regulation of public companies other than investment funds. We also oversee mergers and acquisitions transactions. The question you asked focuses on one of our central roles, which is continuous disclosure review. It's the oversight monitoring of the ongoing disclosure of the over 1,100 public companies that have head offices in Ontario. Each year, we look at over 25% of issuers and provide comments to the issuers, engage in dialogue with them and often convince them to correct their disclosure. Our review programs are risk-based, so we select companies and issuers for review based on risk to the market.

Just to get back to MD and A for a moment, we do full reviews of issuers where we look at everything that they file. We also do targeted reviews, and we have done targeted reviews on MD and A, so that is one that I can speak to specifically. A compliance function is usually very cooperative. What we do is we'll have accountants assigned to review the MD and A of the particular company. We look at it; we ask a variety of questions. If we don't think it's strong enough, if we think it's only telling good news and not bad news, if we think that there is information that's missing, there will be a comment letter issued, and the company has a limited period of time to respond to the comment letter. We set deadlines. The company normally responds in writing, and then there will be a discussion. We engage in discussions with the issuer.

Normally, if the deficiency is very severe, we'll ask them to restate. We have had issuers refile their MD and A. It's a corrected MD and A. Again, the company's name goes on our refilings list that I referred to earlier.

Other times, what we're trying to do is just improve the level of disclosure, so we have conversations about how they may want to think about their disclosure in the future. We don't see anything particularly concerning, but it's an ongoing discussion about improvements. If we see something that is very bad, that's when we refer to enforcement.

Mr. David Wilson: Your question was about the consequences of discovering something inappropriate. There are cases where Margo's branch will find something troubling and will refer it to enforcement for investigation and possible sanctions.

Mr. Kevin Daniel Flynn: What form would the sanctions take? Can you compel a company to change its MD and A?

Ms. Margo Paul: You can compel it to refile documents, yes.

Mr. David Wilson: But the sanctions, if it gets past enforcement, can range very widely, depending on the nature of the bad disclosure. It's quite a wide range. Peggy has been involved in a few of these lately.

Ms. Peggy Dowdall-Logie: Yes. The consistency in a proper disclosure is one issue. So if you have a company that has repeatedly engaged in this behaviour, then you're probably going to see greater fines, maybe directors' and officers' bans, that sort of thing.

Mr. Kevin Daniel Flynn: But at the end of the day, even taking into account the risk, I suppose there's a variety of opinion that you can read financial statements and you can read almost what you want into them. At the end of the day, is the average investor in Ontario assured that they're getting accurate information from management in those filings?

Ms. Margo Paul: The chief executive officer and the chief financial officer are required to file a certificate with their financial statements certifying that the financial statements fairly represent the financial condition of the company, unless the statements are audited. So in terms of whether there's a guarantee, it's hard for there ever to be a guarantee against people misbehaving in quite a dramatic way. However, there are a lot of protections built in and we do have a very robust review program to look at financial information.

One of the stats that I have is that in fiscal 2007-08, 67% of our continuous disclosure reviews resulted in disclosure- or accounting-related improvements, so we have a very significant impact on the issuers we review.

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The Chair (Mrs. Julia Munro): Thank you very much. I think we'll move on and catch you in the next round. Ms. MacLeod.

Ms. Lisa MacLeod: Welcome back to committee. I appreciate your taking the time to meet with us today. I have a few questions and I'm going to cede the rest of my time to my colleague Tim Hudak.

Given the dramatic shift in the economy, the restructuring and the settlement of the asset-backed commercial papers and the Hockin report, which made it into Mr. Flaherty's budget, there have been significant changes since we last saw you in December. I'm wondering if you have met since that time with the Minister of Finance in Ontario.

Mr. David Wilson: Yes. I've had one phone call and I think two meetings since we were here last time.

Ms. Lisa MacLeod: Okay. I'd like to ask, again, if you've at all met by invitation to the province's cabinet.

Mr. David Wilson: No. The OSC has not been to the cabinet.

Ms. Lisa MacLeod: Have you ever been?

Mr. David Wilson: No.

Ms. Lisa MacLeod: Okay. Have you had any conversation with the Premier during this time?

Mr. David Wilson: No, I have not.

Ms. Lisa MacLeod: Okay. I appreciate that, and I'll be very forthcoming with why I asked. The economy has shifted quite dramatically. I know that every member of this committee has received concerns in e-mail or by phone call from people right across the country. Given the situation we're now in and the severity of it, I was

just curious to see if you had met with the cabinet, as is defined that you're able to do through your MOU.

I just have another quick question to follow up on Mr. Flynn's question about the OSC and how it would impact consumers. I'd rather ask today how it will impact this province: How will it impact the OSC, and what steps do you see this province taking in the next year or two years?

Mr. David Wilson: Just for clarity, Ms. MacLeod, what will what impact, precisely, have you got in mind?

Ms. Lisa MacLeod: The OSC, specifically your organization; your agency that's here today.

Mr. David Wilson: The nature of the economic recession, you mean, or what's—

Ms. Lisa MacLeod: No. I'm actually asking an operational question with respect to how you will operate. What are the next steps? I assume that one of the conversations you would have had with the Minister of Finance in the province of Ontario was to discuss Mr. Flaherty's announcement in the budget in January. As a legislator—and I know there are many Ontarians watching here today—what's going to happen to the OSC?

Mr. David Wilson: Oh, under the federal budget proposal to create a national regulator?

Ms. Lisa MacLeod: Right.

Mr. David Wilson: Okay, now I understand your question. As I said, I've had discussions with the minister a couple of times, and with his officials many times, on the role of the OSC in the transition. As I think was said earlier, the federal budget provides for the creation of a transition office and a budget of \$150 million, I believe, to fund the transition process. So what we have communicated to the Ministry of Finance in Ontario is that the OSC will be available to provide our resources and our expertise to work on the new Securities Act. There was a draft tabled with the budget, but it's just a draft. Most observers believe it's a draft that needs quite a lot of work, so we will bring our resources to bear on that process.

I've also expressed to the ministry the desire of the OSC to be involved in and knowledgeable of the transition process. So those are pretty broad reactions, but it's early days. The Hockin report has been out for about a month now, so we haven't heard exactly how the transition is going to unfold.

Ms. Lisa MacLeod: So you have no set timeline? There's no timeline either from the federal government or, at this stage, from the Minister of Finance in Ontario?

Mr. David Wilson: No. In fact, we have a monthly meeting with staff at the Ministry of Finance. We call it our work-in-progress meeting, the WIP meeting. We're having one tomorrow morning for an hour and a half. We have it every month. One of the items on our agenda tomorrow is to discuss the Hockin report, consequences for the OSC and the work that should be undertaken. So your question is very much on live dialogue; it's happening right now.

Ms. Lisa MacLeod: Great. Are there any consequences that you could speak of here today that we might

want to know about? I assume what's going to occur, when Ontario does sign on to this common securities regulator that we will be dealing with in the Legislature through—you're governed by statutes. I'm sure there will be legislation coming forward. While we have you here today, it might help us—

Mr. David Wilson: I've really described the process, and unless my colleagues have other things that can be added to the dialogue we've had with the ministry in the months since the Hockin report was tabled—Peggy, anything to add?

Ms. Peggy Dowdall-Logie: No. As David said, we do have our monthly with Ministry of Finance staff. Throughout the month, in between those meetings, we have other meetings that are going on, but we have had no discussion with respect to the next steps.

Ms. Lisa MacLeod: Okay, thanks. Just quickly, the last time you were here we discussed the fact that you didn't have a chief enforcement agent. Since then, you have hired somebody.

Mr. David Wilson: Yes.

Ms. Lisa MacLeod: I had three questions. One was, why didn't you have someone there? I also asked if you were actively reviewing your enforcement activities and if you think you require additional enforcement power. I'm just wondering: At this time, are you reviewing your enforcement activities with the appointment?

Mr. David Wilson: I'd like to ask both Peggy and Larry to contribute to the answer on this. Peggy was very involved with me in the recruiting of the new head of enforcement and she's had discussions with him, Tom Atkinson, about the positioning of the branch, which is in its strategic direction, which is part of your question. Peggy, why don't you go first in answering Ms. McLeod's question?

Ms. Peggy Dowdall-Logie: I'll just set the context to say that with respect to each of our operating branches, of which there are five, at the beginning of the business planning season we step back to look at the operations of each branch, enforcement being one of them. We are in business planning season, coming to the end of it at this point. That said, the enforcement branch—the structure of it and the operating initiatives of it are being very focused on at this stage, of course, as a result of the hire of a new head of enforcement. So Tom and I have looked at the organizational structure; we've made some changes since his arrival. We're also looking at various initiatives that we have ongoing within the enforcement branch.

I think, when I was last here, we talked about the enforcement branch being divided really into three pieces. One is intake, the other is investigations and the third is litigation. So that overarching umbrella of activity would essentially remain the same. The question that we're focused on now is, what new consideration should we have over, on top of, those three day-to-day operating areas?

Mr. David Wilson: The second part of your question, Ms. McLeod, if I'm correct, was what new enforcement powers would be considered to be useful. Was that the second part of your question?

Ms. Lisa MacLeod: Right.

Mr. David Wilson: Larry, Peggy and I and the other vice-chair, Jim Turner, spent a lot of time talking about what other enforcement powers we might need that would improve our performance. With a new enforcement director on board, that dialogue will be more active than ever, and we would expect to come back to the minister with some suggested changes. The only legislative change that we asked for, which he put through the House, was reciprocal orders. That was passed by the Legislature last year. It means that an order granted in one province in Canada is reciprocated automatically by statute—not automatically. What's the process, Larry, for a reciprocal order being in place?

Mr. Lawrence Ritchie: There's an application that is made and a satisfaction that it should be applied in Ontario.

Mr. David Wilson: It's not quite automatic, but it is close to. That's one thing we've asked for. We may have other things to talk to the minister about after the new fellow gets his feet on the ground.

Ms. Lisa MacLeod: Okay. I appreciate that. So just to be clear, then: With the new common securities regulator, will the OSC in its current capacity cease to exist?

Mr. David Wilson: If the Hockin recommendation for a national regulator is followed through in the form proposed, there will be a new single Canadian body of all participating provinces, so technically the entity of the OSC will be rolled into, in some way, this new body. So, technically it would cease to exist.

Another recommendation in the expert panel report is the separation of the adjudication function from the policy-making function. Every securities commission in Canada, except for Quebec, currently has a twin mandate, as Larry described it, where the adjudication is under the same umbrella but functions separately. So that would be a change too. If Hockin goes forward, there would be a national adjudication function and there would be a national commission that's a separate body, populated by the staff of the OSC and other regulators. But technically, the body would cease to exist, yes.

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Ms. Lisa MacLeod: Just finally, I understand that there have been a lot of changes with respect to the OSC and the discussion of the common securities regulator. One thing you should know is that your memorandum of understanding expired a year ago. It was last signed by Janet Ecker and your predecessor. So we've had two finance ministers since that time, and I think it might not be a bad idea for you to update that.

Now I'll cede my time to Mr. Hudak, but I would be entertained by any comments.

Mr. David Wilson: Just in response to the memorandum of understanding, it did expire in May, I think, of last year. We've had extensive discussions with ministry staff. My latest information from our staff is that the agreement has been reached and it's ready to be brought to Management Board.

Ms. Lisa MacLeod: That's great. Thank you.

The Chair (Mrs. Julia Munro): We'll move to Mr. Hudak.

Mr. Tim Hudak: Thanks, folks, for coming back to the committee.

Just following up on my colleague Ms. MacLeod's question: The MOU is ready to be signed?

Mr. David Wilson: Peggy, what's the latest on the status of the MOU, as far as we know it?

Ms. Peggy Dowdall-Logie: It's staff's understanding that the MOU is ready. It has been approved in form, I guess. So we are waiting to hear, probably tomorrow, from our Ministry of Finance colleagues as to what the next steps will be.

Mr. Tim Hudak: Are there any substantive changes in the MOU from what's currently on the books?

Ms. Peggy Dowdall-Logie: I'm just going to look behind me to one of my colleagues who is, in fact, responsible for managing the MOU process with Ministry of Finance colleagues, to confirm that there is one substantive change. I don't know that it would be considered substantive.

Interjection.

Ms. Peggy Dowdall-Logie: Sorry. This is Tula Alexopoulos.

Mr. David Wilson: Would you mind if we brought her up to the table?

Mr. Tim Hudak: Oh, please bring Tula back. We miss her. She hasn't aged a day since 1995.

The Chair (Mrs. Julia Munro): We would ask you to introduce yourself for Hansard.

Ms. Tula Alexopoulos: Tula Alexopoulos. I am the director of the office of domestic and international affairs at the Ontario Securities Commission.

Thank you very much for the lovely compliment.

As Peggy mentioned, for the past many months, we have been working with the ministry staff, and we have revised the memorandum of understanding. There are some amendments, but for the most part they reflect changes to be consistent with the agency accountability directive. So the OSC complies with that directive, and what we have done is we have pulled provisions from that and have inserted it into the MOU.

Mr. Tim Hudak: Otherwise, it's basically the same as the previous MOU.

Ms. Tula Alexopoulos: Yes.

Mr. Tim Hudak: Super. Tula, thank you very much. It's good to see you again.

Folks, again, thank you for coming back. Last time, I had centred on the issue of lax enforcement at the OSC, and I had spoken about a number of high-profile cases where it seemed like the prosecution took place in the States or in the press before the OSC acted, if it did: Conrad Black, Livent, Bre-X, YBM Magnex, Cowpland at Corel, Rankin, Nortel—a considerable number of cases that have led to, as you know, extensive debate about whether there exists a Canadian discount on investing in this country, and in this province as a result. As my colleague Ms. MacLeod noted, there have been some changes, which I take as positive news in addressing this concern on behalf of investors.

As noted, I commend Finance Minister Flaherty for bringing forth a single national regulator. You did note that what he is doing is separating the adjudicative function from the enforcement side. Your predecessor had Justice Coulter Osborne bring forward a report that had recommended the exact same thing here in Ontario in 2005. So, if it was a good thing to do, why didn't we act here four years ago?

Mr. David Wilson: That's really not a question for me, I don't think, with respect, Mr. Hudak; it's a question for the government. We wouldn't take the initiative on creating a separate tribunal in Ontario; the ministry would.

I can tell you that I had conversations with Minister Phillips, when I first became chair of the OSC, about this. As many of you will know or recollect, he was actively engaged in the cause that Mr. Flaherty has taken up, the creation of a national securities regulator. He put together a panel called the Crawford Panel, and a thing called the Crawford blueprint was produced, supported by Minister Phillips. What he had said to me about the question you've raised about the separation of the adjudication function from the policy-making function of OSC—Minister Phillips's view was, "Let's work toward the creation of a common regulator for Canada, and if the arguments in the creation of that new entity are that it should have a separate adjudicative panel, let's wait until that important event happens rather than restructuring the OSC while we're waiting for that big event." So that's been the thinking, I believe, of the Ministry of Finance on the Osborne report: "Let's wait until the right answer happens," which the Hockin panel has recommended. I believe it's the right answer, and it does contain a proposal to separate the adjudicative function on a national basis from a national basis.

Mr. Tim Hudak: You just said that in your view the best solution is to separate the two.

Mr. David Wilson: No, that's what Hockin said, I think is what I said. It's not a simple issue. There's been lots of debate about it. Larry, I think, has views on it. He's a former litigator who has dealt in front of the panel and in front of the courts, so you understand the difference. It's not a simple question, but Hockin's recommendation is that that structure has merit and should be considered when a national regulator is created. So you'd have a national adjudicative body and a national securities regulator—two national bodies staffed with the best possible people the country can come up with to do those jobs.

Mr. Tim Hudak: But surely, as chair of the OSC, you would have a strong viewpoint if that's the proper way to proceed on behalf of investors.

Mr. David Wilson: No. On that issue, I take instruction from the ministry. I wouldn't take the initiative to restructure the OSC along the lines of the Osborne report without direction from the minister.

Mr. Tim Hudak: But take us back to 2004, when you sat down with then-minister Phillips. What was your advice to him in following that recommendation—

Mr. David Wilson: It was his advice to me. He said, "We're going to work on this common regulator proposal. I've got Purdy Crawford and a bunch of other wise people from across the country to come up with a plan. Pending the outcome of that worthwhile work, the government is not turning its attention to fracturing the OSC into two pieces." So I took that as instructions from him.

Mr. Tim Hudak: Was that the right decision?

Mr. David Wilson: Was it the right decision to—

Mr. Tim Hudak: Not take up Osborne's recommendation and leave the OSC together.

Mr. David Wilson: I can tell you that the OSC functions, I believe, as its CEO, very effectively in its current structure. We are very thorough in our conduct to make sure that the adjudicative function of our commissioners—and I have one sitting here on my right—and the policy-making function of our commissioners are kept very separate and are handled in a hermetically sealed way, if you like. So we manage the process of the existing structure very thoroughly and carefully. Larry, you might want to add to that.

Mr. Lawrence Ritchie: The only thing I want to say for Mr. Hudak's benefit is my impression that the debate about whether to separate the adjudicative function from the policy function is not driven by an investor-protection, tough-enforcement point of view. In fact, I don't want to say it's the opposite, but the Osborne commission report, as you know, was a fairness committee, and the concern was the optics that respondents who are accused of wrongdoing are given the most fair hearing. So it is a complicated issue. The sides of the debate, as I know you're well aware of, are that whether a divided, separate adjudicative function would give the adjudicative panel the opportunity to have the policy expertise that is embedded in an integrated model. So that's the flip side of the equation.

Mr. Tim Hudak: Osborne spoke about—he didn't find bias, if I recall. He felt there was a strong perception of bias, and I think that relates to confidence in the system. It underlines some main concerns that I expressed at committee the last time around. To the Chair, maybe he can characterize. The reaction to Hockin's recommendation in this respect, though, has been largely positive?

Mr. David Wilson: It depends what province you're in.

Mr. Tim Hudak: But specifically on separation of the functions. Those that have commented on that aspect of Hockin.

Mr. David Wilson: Frankly, there hasn't been a lot of conversation about that part of the Hockin report. Most of the conversation has been about how many provinces will participate; will the constitutional challenge of the federal government's ability under the Constitution to bring about this structure be supported if challenged in the Supreme Court? But that's what's been talked about. Maybe you, Larry, have a different view, but I haven't had conversation about the separation.

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Mr. Tim Hudak: No. I'll move on to another issue. If I could ask you, Chair, for research. There were some strong concerns raised by Osborne, more than four years ago now, on perception of bias. Maybe through research we could find out why successive ministers responsible for the OSC didn't act for four or five years.

Biovail: You had fined, similarly for Biovail, a \$5-million fine very recently, and similarly an agreement with the SEC for a similar type of settlement, I believe around the same period of time. You were given enhanced powers, I think, back in 2002 or 2003 for stiffer financial penalties which are in use in a case like this. Are the penalty levels that you can assess appropriate or should there be greater scope to enlarge those?

Mr. David Wilson: I'd ask Peggy to add her opinion on this. She was quite involved in the Biovail matter which you cite. But you're correct: The penalties were increased around the time period you mentioned where we had the power to issue or impose penalties of up to \$1 million per infraction.

Peggy, do you have anything to add on the Biovail context or just generally on the question that Mr. Hudak has posed?

Ms. Peggy Dowdall-Logie: In response to the question, do we feel that the tool we have is adequate: I think we do feel that the tool we have is adequate with respect to financial penalty, and I think it's because of the way the provision in the statute is worded, where it talks about a maximum fine of \$1 million per infraction or occurrence. That allows us to take into consideration a number of factors when identifying, at a staff level, what we believe to be the appropriate fine.

Mr. Tim Hudak: So the fine for Biovail at the end of the day was a \$5-million settlement.

Ms. Peggy Dowdall-Logie: That's correct.

Mr. Tim Hudak: What aspect was the fine for infractions?

Mr. David Wilson: Failure to comply.

Mr. Tim Hudak: Was it all for failure to comply or were there costs that were assigned or was it—

Ms. Peggy Dowdall-Logie: There were costs. There were staff costs. So it's a \$5-million fine, and then there was, I think, approximately \$1.5 million in staff costs over and above that \$5 million.

Mr. Tim Hudak: Then, a few weeks later you had the settlement with RIM.

Ms. Peggy Dowdall-Logie: That's correct.

Mr. Tim Hudak: A \$68-million settlement. I note, though—unless something has changed, and please correct me if I'm wrong—that there has not been a similar settlement reached with the SEC as of yet.

Mr. David Wilson: There was.

Mr. Tim Hudak: There was? Okay. Was it in a similar line as the OSC?

Mr. David Wilson: February 12, the SEC settlement was reached. Peggy, could you characterize the SEC settlement? It was different, although we were in very, very regular and close dialogue with the SEC as our two

investigations marched forward. To say it was a co-ordinated effort would be going a bit too far, but it was highly co-operative.

Ms. Peggy Dowdall-Logie: Yes. The staff of the OSC's approach with respect to the RIM matter was to find, at a certain point of time in our investigation, that the SEC had their own views, so we shared views, of course, as David said. We were in extremely close contact with the staff of the SEC. Once it was determined that there was an opportunity to coordinate, and what I mean by that is that the OSC staff view was that it was important for us to make the shareholders whole, the SEC were comfortable with that approach. They agreed with that approach, that it was relatively straightforward for the two of us to identify, kind of in a balance sheet approach, which remedies were appropriate to use.

Mr. Tim Hudak: The Financial Post's coverage of the OSC settlement on February 6 is quoting—I believe I recall the article correctly—James Turner, who was the chairman of the panel that agreed to the settlement. Mr. Turner had a quote in the article: “‘Our role is not to penalize,’ the OSC commissioner said. “‘Our role is to identify inappropriate conduct and that it will not be tolerated.’” Is that basically the approach of the OSC?

Mr. David Wilson: Yes. The OSC is intended to be preventive in its activities, not punitive. Therefore, on the big canvas of the regulatory structure, we do not have the power to pursue criminal activity. That's left to the Attorney General's department. Ours is an administrative function. So administrative tribunals typically are more interested in preventing wrong and removing convicted wrongdoers from the marketplace so they can do no further harm. That's kind of the statutory umbrella. Larry, you're the lawyer; have I got that right, as a non-lawyer?

Mr. Lawrence Ritchie: In my view, yes, and it's also a constitutional issue. Penalties are largely associated with criminal law, which is a federal jurisdiction. We act under, as you know, provincial legislation, which is administrative. So when we exercise, as a tribunal, our administrative functions, we have to act with regard to the objectives of the statute, which is to protect, and that has been interpreted in case law as being a proscriptive, preventive jurisdiction as opposed to a penal, remedial jurisdiction.

Mr. Tim Hudak: Is it expected that Hockin's new creation will follow a similar type of approach and you'll have a greater ability to impose sanctions?

Mr. David Wilson: There's a long discussion there. In the Hockin report—which we've all read carefully, of course—he has proposed, as phase two, after the creation of the new national securities commission and his new proposed national tribunal, that the structure of enforcement in this country be radically restructured and that both criminal and adjudicative securities enforcement matters be under the umbrella of the enforcement branch of this new Canadian securities commission. He recognizes that that's an extremely complex proposal, so it's put in an appendix of the report for further study and further consideration. So it's more of a musing that is in

the Hockin report rather than a hard recommendation, but that's an area that he has recommended be explored further.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on to Mr. Prue for the second round.

Mr. Michael Prue: How long is this occasion?

Mr. Tim Hudak: It depends on the quality of the questions.

Mr. Michael Prue: How about the hours?

The Chair (Mrs. Julia Munro): The hours—no. You're at about eight minutes.

Mr. Michael Prue: Eight minutes. Okay.

I just want to get back to the Crawford report back in 2003. The CBC aired a documentary about securities law enforcement, or lack thereof, last November. A victim of securities fraud was interviewed and expressed his frustration with the Investment Industry Regulatory Organization of Canada. It took them a year to only begin looking at his case after he spent \$50,000 of his own money collecting evidence.

IIROC is a self-regulating organization. It acts both as a trade association and as a regulator. This fact troubled the individual and he wondered who the organization really protects. The Crawford report made a similar comment, that “we remain concerned about an issue.... Investors must feel that when they have a complaint against an IDA member they receive fair and unbiased treatment from the IDA in addressing their complaint.”

To what extent do you believe that Ontario's reliance on SROs contributes to our problems in cracking down on securities law violators?

Mr. David Wilson: Let me answer your question and, with respect, make one correction to what you've just said, Mr. Prue. The Crawford report you're referring to is the five-year committee report. I was on that committee in my former life, so I'm quite familiar with the recommendations of that Crawford report. The Crawford report, after much debate we had around the table, recommended that the Investment Dealers Association, as a self-regulatory organization, shed itself of its trade association activities. That was the recommendation the Crawford report made. I believe it came to this committee, or a similar standing committee, which endorsed that recommendation.

Shortly after, the then-IDA, the Investment Dealers Association, did shed its trade association activities. It fractured itself into two pieces. The IDA kept the old name, the SRO, the pure regulator, and a new organization was created called IIAC, Investment Industry Association of Canada. That organization exists now. So the correction in what you said, I think in your question, Mr. Prue, is that the IDA has shed and is no longer engaged in any activities that a trade association would be engaged in, so it's a pure SRO, but “SRO,” of course, means that it's an industry self-regulatory body. It's a regulator, but it's funded by its members. Half of its board members are industry members and half are independent directors, but it no longer does have a trade association function.

Mr. Michael Prue: SROs, though, continue to exist?
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Mr. David Wilson: Yes. There are two important SROs in Canada. It's now called IIROC and MFDA, the mutual fund dealers. There are two large national SROs in Canada.

Mr. Michael Prue: And are there any complaints or difficulties with them as set out in the TV documentary of last November?

Mr. David Wilson: One of the SROs' main responsibilities is the oversight of investment advisers at the retail level, and there are complaints. Some investment advisers do not comply with the suitability requirements, the know-your-product requirements, the know-your-client requirements. So there are issues with investment advisers, and they are part of the responsibility of the SROs. So yes, there have been complaints directed to the SROs themselves, to OBSI and to us about the conduct of some members of the SROs, for sure.

Mr. Michael Prue: How many of those investigations are ongoing by the OSC?

Mr. David Wilson: Do we have any numbers on that? If not, we can certainly get them to you.

The SROs conduct their own investigations, but we work very closely with them on a number of investigatory matters.

Ms. Peggy Dowdall-Logie: For the period ended February 15, 2009, there are 13 investigations under way with respect to abuse of trading practices, but that might touch on what you're talking about and it may not. If you're looking for an actual number, yes—

Mr. David Wilson: We could get you the number. If your question is about investigations into the conduct of investment advisers by the OSC or IIROC, we can get you those numbers if you'd wish. We haven't got them at our fingertips today.

Mr. Michael Prue: Okay, but it is an ongoing problem with investor complaints and people upset about the process and thinking that the system isn't working. It's ongoing, and that doesn't stop.

Mr. David Wilson: There are 28,000 investment advisers who are members of the IDA and about 75,000 investment advisers who are members of the MFDA, so that's 110,000 registered investment advisers who deal every day with retail investors in this country. Those are national numbers. Among those 110,000 investment advisers, I have no doubt that some of them, a small minority, do not give proper advice to their clients in line with their suitability obligations or their obligations to know their products or know their clients' needs. That's where the complaints arise.

Do you have anything to add to that, Larry? You're quite involved in this area too.

Mr. Lawrence Ritchie: One of the things that the registration reform project that was referred to by Mr. Flynn—one of the major components is to have a consistent standard of registrant adviser conduct, whether they're members of each individual SRO or not. One of the things that registration reform is working on is a

consistent, unified complaint-handling process as well as a process of minimum standards in terms of what's required when opening an account and dealing with your customer. So that's one of the ways that the OSC is helping, along with its other CSA partners, working with the SROs to have a consistent standard.

Is there work to be done? Absolutely. The point that we're trying to make is that we are doing it.

Mr. Michael Prue: Do you have any kind of licensing regime? If you get complaints and if you find the complaints to be justified, do you either remove people or make them take courses or what do you do? Or do they just go back to business as usual?

Mr. David Wilson: We could ask one of our experts to come up and answer that. It's a very good question, and let's get the best possible expert at the table to answer it. Susan Silma, would you mind coming back up to the table?

Do you know the question that was posed, as you were sitting in row 1 back there?

Ms. Susan Silma: Yes. "Is there anything we can do from a licensing perspective?"

Mr. Michael Prue: Yes. If you find someone who has not acted in the best interests of his or her client, has been found to be negligent or wilfully doing wrong things, do they just go back to work?

Ms. Susan Silma: Hopefully not. One of the things that we can do is impose what are called terms and conditions on their licensing. As a result, that would limit the activities or, depending on what the issue was, they would have to report to us on a more frequent basis and make us comfortable that they were, in fact, improving their standards and being responsive to their clients' needs before we would let them go away without our increased supervision. If that doesn't work, we actually have kicked cases like this over to the enforcement area, and in some cases it has resulted in a ban of that individual from the securities industry.

Mr. Michael Prue: In Toronto, if you go to a restaurant, on the front window you'll see the green thing saying that everything's checked out and what happened the last time and whether there's been any complaints and whether there's been any action in the last year. Do you make these investment advisers who are under complaint or who have been found to be negligent post-anything so that a would-be investor coming in would know that there have been complaints in the past?

Ms. Susan Silma: Actually, it hadn't occurred to me to put the green symbol on it, but I think that's an interesting idea. What we do have on our website is a listing if someone is under terms and conditions or under some kind of review. Peggy just pointed out to me that we in fact have terms and conditions attached to 742 firms and 1,020 individuals, just for the most recent six months. This does happen fairly frequently, and results in increased monitoring of those people.

Mr. Michael Prue: That seems to be an awful lot of firms and people in the last six months. Is that what you said—six months?

Ms. Susan Silma: Yes, it is.

Mr. David Wilson: We're very busy at the OSC.

Mr. Michael Prue: I understand you're busy, but it seems to me that that's an awful lot of people who are unhappy with the services they're getting.

Ms. Susan Silma: Just to be clear, not all of those are responding to someone's complaints about how they've been treated. Not all of those would be suitability issues or if someone didn't give me the right advice. Some of that would be something as simple as someone who didn't file their financial statements on time. Again, we take these obligations pretty seriously, so that's probably a very broad array of terms and conditions that are attached.

The Vice-Chair (Ms. Lisa MacLeod): Okay, thank you very much. We appreciate the NDP's opportunity, and now we'll go to the Liberal Party. Mrs. Sandals?

Mrs. Liz Sandals: Yes, thank you. I wonder if we could go back to the conversation that you were having with Mr. Hudak, where you were exploring the fact that criminal prosecution would be with the AG. I just wonder if you could comment on whether, if there were to be one national securities commission and given that the federal law does sit at that level, it would in fact facilitate the pursuit when you get to the level of criminal activity.

Mr. David Wilson: The Hockin committee, in its deliberations—it was out about nine months having consultations. One of the papers that it had submitted, and it's on the website of the Hockin expert panel, was by a professor at Osgoode, Poonam Puri, and she explored the separation from Canada's criminal justice system of securities criminal activity and putting it together with the administrative. That's really your question. That paper was studied pretty carefully by a number of us, including Larry Ritchie. It was clearly considered by the Hockin panel.

In their final report, they did not recommend the structure that Poonam Puri had outlined in that research paper of hers. They modified it somewhat and proposed that it be considered at a later time. It had some interesting elements, is essentially what it said.

You've asked a question about a very complex area of reordering criminal justice in Canada, reorganizing it. It's federal authority with delegation to the provinces. Larry knows a lot more about it than I do. Could you have a more pointed response to Mrs. Sandals's question, Larry?

Mr. Lawrence Ritchie: I'm sorry I missed all of your question, but is the question if—

Mrs. Liz Sandals: I was wondering, if there was one national regulator, if this would in any way facilitate criminal prosecutions when there is a suspicion that there has been criminal wrongdoing as opposed to administrative wrongdoing.

Mr. Lawrence Ritchie: Again, this is just speculation because it's something that may happen in the future. If you think of the world now, where you have 13 securities regulators, each of the provinces have Attorneys General, you have variations in law, and then you have the

criminal law system, I think that the rationale underlying the Hockin recommendations on the enforcement side is that the more consolidation, the easier it is to facilitate coordination and co-operation among the branches. We mentioned before that we do an awful lot of work in terms of co-operating with various regulators across the jurisdictions and different agencies including the offices of Attorneys General, but if there are fewer parties, then perhaps it would be more efficient. From that point of view, the Hockin committee clearly says that greater consolidation would make it more efficient.

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Mrs. Liz Sandals: I just wondered if there was any possibility that not only would there be greater efficiency, but there might be an opportunity to build an investigative body with greater expertise in actually investigating criminal matters related to securities. I wouldn't begin to have a clue where to start, and I'm sure it's often the case with law enforcement agencies that they don't have a clue where to start in what are very often matters that are beyond your average layperson.

Mr. David Wilson: The attempt to do what you're proposing occurred after the US scandals of Enron and WorldCom. The federal government stepped up and created a new police force called IMETs, focusing on exactly what you're describing: securities fraud and the criminal elements of securities fraud. There has been a lot of controversy about the effectiveness of the new federal government IMETs. They recently had a report done, and they're reforming some of their activities, and there are signs that there may be some greater momentum in the IMETs initiative. So that piece of the criminal investigation puzzle that you referred to is a work in progress, I think it would be fair to say.

Mrs. Liz Sandals: So the jury is out on that discussion at this point.

In your opening remarks related to the asset-backed commercial paper issue, you mentioned the need to have a closer look at credit rating agencies and the role that they play and more oversight of credit rating agencies. I wonder if you could, first of all, give us some rationale for why that seems to be necessary in these circumstances, and then secondly, what you would see that tighter control and oversight looking like.

Mr. David Wilson: The credit rating agencies were a part of the financial crisis we're in, not just in Canada but around the world. They rated a number of structured instruments, and with the benefit of hindsight, the ratings were erroneous. So there's a huge spotlight on the rating agencies, their function, their conflicts, how they conduct themselves, how useful their ratings are, should they be referred to in legislation, and so on. I guess it was Mr. Flynn who said earlier that the Europeans are proposing legislation dealing with rating agencies, almost all of which are based in either the US or Canada. So, yes, there's a lot of focus on rating agencies.

In our consultation paper, we propose some ideas to give much greater regulatory oversight of rating agencies and their compliance with a code of conduct that would

eliminate their conflicts and make sure that they were not unduly influenced by who was paying for the ratings.

Larry, you've done a bit of thinking about this as well. Do you want to add to my answer?

Mr. Lawrence Ritchie: Sure. The one point that I wanted to emphasize, and I think David did in his opening comments, is that this is an international issue as well. All of the securities regulators across the world are looking at the role of credit rating agencies. Certainly, Ontario and other jurisdictions in Canada do not want to go it alone. Like anything else, good regulation is co-ordinated regulation. So we're very much involved in IOSCO, the international securities commission, and their approach to credit rating agencies. One of the things that they did last summer, I think, was come out with a code of conduct for credit rating agencies. One of the things that the proposed regulation-enhanced proposals in the ABCP working presentation—was to sort of loop into that process and to have a requirement where credit rating agencies in this country would be required to comply, or explain why they're not complying, with the IOSCO code of conduct, which, as David said, would go through the process of explaining conflicts of interest, to explaining transparency in why they're taking certain steps and certain—

Mrs. Liz Sandals: And this is something where there's an international template that we would be able to use here in Ontario.

Mr. Lawrence Ritchie: Exactly. That's being dealt with right now. That template is something that's the subject of a lot of international work in advance of the G20 meetings.

Mrs. Liz Sandals: So, again, a work in progress.

Mr. Lawrence Ritchie: Right.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. We'll now move to the official opposition.

Mr. Tim Hudak: Just to finalize the conversation we're having—I think you described putting in an appendix about whether to bring in the criminal aspect of a charge. Do you care, as chair, to offer an opinion? Do you think that's the proper place for a national regulator to go?

Mr. David Wilson: To combine criminal enforcement and administrative enforcement in the new national regulator, is that the question?

Mr. Tim Hudak: Yes.

Mr. David Wilson: It's a complicated question. Larry and I have had debates about this. To take each province's Attorney General's department and take their responsibility for the criminal activity in securities only and pull it out to put it in a securities regulator—it's not a crazy idea, but it's got a lot of complications in terms of execution and politics. That would be my fast take on it. Larry?

Mr. Lawrence Ritchie: Well, that's precisely my view. It's very complicated. It's worth studying. There are different functions and terms. We talked about the different roles of an administrative body in terms of prevention and protecting investors as opposed to the

criminal side of things, penalizing and general deterrents. It's very complicated when you merge those two quite distinct functions into one body. My own view is that there should be an incremental approach as opposed to just dropping a box down.

Mr. Tim Hudak: I appreciate the complexity and I appreciate the way you've described it, but investors would react positively to that, would they not? There's a perception—I think, a reality—that white collar crimes are far too often simply a slap on the wrist for the amount of value that's been defrauded from retail investors. Wouldn't investors' groups react quite strongly to this?

Mr. David Wilson: Yes, I made a speech a month or so ago about that very point, that there should be recognition—I was really speaking to the criminal justice system—of the harm done by white collar crime to people's health, their lifestyle, their mental health, their physical health. The impacts of white collar crime can be just as severe on citizens as violent crime, but traditionally the criminal justice system hasn't imposed the same kind of resourcing and sanctions on that kind of conduct. Anyway, I'm just repeating what I said in a speech not too long ago. I think there should be a positive reaction to greater emphasis on the pursuit of criminal activity in the white collar area, because it has a huge impact on people when they are defrauded of their savings. It's a tragic, tragic thing.

Mr. Tim Hudak: A serious failure in our criminal justice system.

Mr. David Wilson: If it could be made better, every attempt should be made to make it better, because these are serious crimes.

Mr. Tim Hudak: One of the concerns expressed as well about the OSC is the rapid rate of turnover in folks that are employed, particularly on the prosecution side—

Mr. David Wilson: At the OSC?

Mr. Tim Hudak: At the OSC. Sorry if I wasn't clear. Is that accurate?

Mr. David Wilson: Peggy, I don't know if you have at your fingertips our—I know I can give our overall turnover numbers, and Peggy may have the enforcement numbers. The turnover at the OSC in the last little while has been quite low: 4% annual turnover; very low.

Ms. Peggy Dowdall-Logie: It's under 4%, actually. In the enforcement area, I'm just going to turn around to look at another colleague, but I don't believe it's anywhere close—I don't believe it's above 5%.

Mr. Tim Hudak: This is an improvement?

Ms. Peggy Dowdall-Logie: It really has not shifted over the course of about the last three years. I think the highest rate of turnover that we've had in three years is—

Mr. Ken Gibson: About 8%.

The Vice-Chair (Ms. Lisa MacLeod): Could you state your name for the record, please.

Mr. Ken Gibson: Yes, hi. I'm Ken Gibson. I'm the director of corporate services at the OSC.

We have a balanced scorecard, and one of our things in that is to have a measure that we want our turnover to be less than a certain amount. The target is to have it less

than 8%; it hasn't been close to that for quite some time. Right now, as we've said, it's running about 4%. That means, on average, people are staying with us 25 years.

Mr. Tim Hudak: Concerns have been expressed to us that investigators and prosecutors have rapid turnover. You say it's not historic. Is it at senior levels, or are you saying it's a concern without foundation?

Ms. Peggy Dowdall-Logie: It just has not been an issue at the OSC for certainly the period that I'm aware of, that I've been overseeing the area. That's about two and a half years. It just hasn't been an issue.

Mr. Tim Hudak: Okay. You mentioned earlier on that you brought Tom Atkinson on—a former assistant crown with TSX enforcement experience. What particular changes do you see Mr. Atkinson bringing to his job?

Mr. David Wilson: Do you want to take a shot at that, Peggy?

Mr. Tim Hudak: Let me ask it a different way. What goals have you set? If we see you again in a couple of years' time, what difference will Atkinson have made?

Laughter.

Mr. David Wilson: Excuse me. I'm laughing because before we came over here and had lunch, Peggy and I met with Tom Atkinson. He's been around for two weeks, and he said, "I want to meet with you guys in the next couple of weeks so we can sit down and set some goals and talk about what you guys expect of me, because it's time to put it down on paper." That's why I'm chuckling at your question.

Mr. Tim Hudak: Perfect.

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Ms. Peggy Dowdall-Logie: Right. As David just said, Tom is on day 11 with us, so as he has said, he has spent the last 10 days really walking around, meeting people. There are just under 140 people in the enforcement branch. He's got a team of six senior managers. So he has been focused on that for the last 10 days. He's also getting up to speed on the various cases that we have. As we are talking, we are focusing on getting Tom into the branch and aware of its structure.

Of course, the next step for anyone coming into a role like that is sitting down with David and myself and saying, "Okay, so what are we going to be looking at over the course of the next 12 months? Over and above what we normally focus on"—which I'd mentioned earlier, which is intake investigations litigation—"what are the special projects, special initiatives?"

Mr. Tim Hudak: So targets haven't been set as of yet.

Ms. Peggy Dowdall-Logie: Not yet.

Mr. Tim Hudak: Pretty good milestones.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much, Mr. Wilson and your colleagues. The committee appreciates your attendance here today.

PAMELA REEVE

The Vice-Chair (Ms. Lisa MacLeod): Next we have stakeholder presentations. Pamela J. Reeve is invited to speak to the committee.

Welcome to the Standing Committee on Government Agencies. You will have 30 minutes in which you are able to make a statement. With the remaining time, committee members will be able to ask questions for your response. For the purpose of Hansard I would ask you to identify yourself. You may begin.

Dr. Pamela Reeve: My name is Pamela Reeve. I'm an associate professor of philosophy at St. Augustine's Seminary, a member college of the Toronto School of Theology.

I'm pleased to have the opportunity to address the Standing Committee on Government Agencies in the context of your review of the Ontario Securities Commission. I've been engaged in pro bono investor advocacy for the past four and a half years. This involvement arose from my personal experience of a financial setback at the time of the last downturn in the markets. This was followed by a four-year complaint process. During this time and subsequently, I made several submissions on retail investor issues to government and regulatory bodies, including most recently the expert panel on securities regulation.

I'm a member of the advisory committee of the Small Investor Protection Association and previously was a member of the OSC's investor advisory committee. This committee met from January 2006 to December 2007.

The two main issues that I would like to focus on in my comments today will be, first of all, the OSC's investor advisory committee, which was disbanded in December 2007, and second of all, oversight and accountability issues relating to the OSC itself. I noted that one aspect of the mandate of this standing committee involves consideration of how to improve the accountability of agencies.

There's a need for retail investors to have their interests represented by a dedicated body or panel. Investor protection is, after all, a main focus of securities regulation. This is expressly stated in the mandate of the OSC: "To provide protection to investors from unfair, improper or fraudulent practices."

One problem that arises here, however, concerns the representation of the interests of retail investors in the formation of regulatory policy which impacts their interests. How do retail investors make their needs, concerns, views, known to securities regulators? One venue where this occurred was the OSC investor town hall, which was held in May 2005. This was attended by about 400 people. Following this event, it was decided that there needed to be a mechanism for the commission to receive input from investors on a regular basis. The OSC decided to establish an investor advisory committee as one of its existing consultative committees, and I believe there were about 13 of these committees at the time.

The rationale for these committees is framed as follows at the OSC website: "We believe that effective communications with the stakeholders who are affected by our actions is an essential part of the regulatory process, and helps us ensure we achieve the appropriate balance between protecting investors and fostering efficient

capital markets.” One purpose of the consultative committees is “to improve our understanding of the concerns and issues faced by a particular stakeholder group on an ongoing basis.”

There was a lot of public interest in serving on the committee; the OSC received over 140 applications for the 10 positions. The committee members who were selected had a very significant depth of experience and expertise. They included a lawyer, a chartered financial analyst, a member of the press who writes on personal finance issues, a forensic financial auditor, a law professor with expertise in securities regulation and a member of the Consumer Council of Canada and so on.

In its announcement of the committee, the OSC recognized the importance of consulting with investors. In the press release announcing the committee members, the OSC chair, David Wilson, stated, “We believe that direct investor input is critical to the health of Ontario’s capital markets and we are looking to the IAC to play a key role in our efforts to address issues of importance to retail investors.”

In January 2006, at a quarterly meeting of the Investment Dealers Association, Mr. Wilson introduced the IAC with the comment, “We’re making it a priority to bring retail investors inside the circle of policy development.”

I want to mention at this point in time that there was a comment previously, I believe by Mr. Wilson, that one of the inherent deficiencies of this committee related to the fact that it was strictly sponsored by the OSC, and are the IIROC people listening, and so on. In fact, there was a plan from the beginning to bring observers and participants from these organizations to be present at IAC meetings. I would estimate that 40% to 50% of the meetings we held were attended by members from the IDA, the MFDA and OBSI. Mr. Wilson stated in January 2006, “As I mentioned, partnership is crucial, which is why both the IDA and the Mutual Fund Dealers Association have been invited to send observers to future committee meetings.”

The committee met five times a year for about half a day and we discussed a wide range of topics, including the client/adviser relationship, the complaint process, restitution, disclosure and transparency issues. We also had the opportunity to review and comment on material that the OSC was preparing as part of its regulatory initiatives—for example, the point-of-sale document. The 10 people on the committee devoted a great deal of time, energy and attention to considering issues which had a direct bearing on the needs, interests and concerns of retail investors.

My sense at the end of the two-year term was not that the committee had completed its work, because we had a lot of issues that were still outstanding that potentially could have been addressed in the following year or two by the committee. Nevertheless, following the final meeting in December 2007, the committee members received a letter thanking us for our work. There was, however, no mention in the letter of whether the committee would be

continued or not. The next we heard about the committee occurred in a trade publication, *Investment Executive*, in May 2008, where the comment was made that the investor advisory committee had “run its course.” I believe Mr. Prue quoted that passage.

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This was the only public comment that the OSC ever made about the committee following the final meeting in December. There has been significant concern since then about the abrupt termination of the committee—although I know the OSC doesn’t want to use that language of “termination.” Nevertheless, as I said before, there wasn’t a sense that we had come to the end of our discussion about the issues that we had identified as being relevant to retail investor concerns.

One thing that was notably lacking at the end of the two-year term was any kind of self-report or self-assessment, which is a standard institutional practice if you are ending a term in a committee of that nature. This was especially needed in this case because the committee had just completed its initial two-year term. I think it was problematic that the committee was just dropped, in a way, without an effort having been made to assess its effectiveness or consider how it could have been improved.

In fact, there was guidance that could have been of value in this respect. In 2006, Professor Julia Black of the London School of Economics published her study, *Involving Consumers in Securities Regulation*. This report was part of the task force on modernizing securities regulation in Canada. It compared different consultative frameworks in the UK, Australia and Canada. Professor Black reviewed the IAC and made specific recommendations which could have been used to improve its operation. In fact, I understand that the OSC studied the UK’s Financial Services Consumer Panel prior to setting up the IAC and even interviewed members of the panel.

Nevertheless, the investor advisory committee was a rather weak version of the UK model: The allotment of time for meetings was much less than the Financial Services Consumer Panel in the UK; there was no research budget, unlike both the UK and Australia; there was never a public report, although one was promised at one point; and there was no way for the committee to receive input from the investing public. There were deficiencies with the committee in the way it was set up, but these could have been rectified.

Following my experience with the committee and its abandonment by the OSC, I made a submission to the expert panel on securities regulation, recommending that they consider the establishment of an investor consultation body modelled on the UK consumer panel as part of a new Canadian securities regulator. As it happens, it was decided that this recommendation should be adopted.

I’d like to read a passage from the final report of the Hockin panel relating to this committee: “Our consultation process revealed that investors are not always adequately engaged and consulted in the development of securities regulatory policy. Securities commissions in

Canada provide fewer opportunities for investor advocacy and engagement than other key capital markets jurisdictions. This is to the detriment of securities regulation in Canada and diminishes public confidence in regulatory accountability, integrity and efficiency.” The outcome of the expert panel study of this particular issue is that they felt that a Canadian securities regulator should include an independent investor advisory panel.

The problem in the present case is that it could take some time, perhaps several years, before a national securities regulator is established. However, in the meantime, I believe that a consultative body modelled along the lines of the UK Financial Services Consumer Panel should be implemented in Ontario or should be considered for implementation as a forum where issues of concern to retail investors may be discussed with securities regulators.

I would describe this committee or panel as a necessary structural remedy for the present imbalance resulting from the fact that retail investor interests are not represented either on the commission itself—at least not by a dedicated member of the commission who is specifically there to represent investor interests—or by a dedicated consultative committee. The OSC currently has eight consultative committees, and all of these committees consist of lawyers and representatives from the industry and listed issuers; there is no representation from retail investors on any of these committees.

Another issue relates to the Legislature’s oversight of the OSC. As I said before, the reason why I am raising this issue is because it does say, in the mandate of this committee, that consideration will be given to improving the accountability of agencies. In fact, there seems to be an outstanding issue in this regard. You may be aware that in 2004, the all-party Standing Committee on Finance and Economic Affairs conducted its five-year review of the Securities Act. Public hearings were held in August and the committee published its report with 14 recommendations in October. Recommendation 4 of this report considers oversight and accountability issues relating to the Ontario Securities Commission.

The preceding Crawford report had compared the Ontario Legislature’s oversight of the OSC with the oversight of the Securities and Exchange Commission in the US and had noted a significant deficiency in the Canadian context. Because the Securities and Exchange Commission in the US has the oversight of two congressional committees, one in the House of Representatives and the other in the Senate, they receive substantial support from the Government Accountability Office. In addition, the Securities and Exchange Commission has a dedicated Office of the Inspector General. This office makes semi-annual reports to Congress on SEC operations and programs.

In contrast, the OSC has no internal oversight by a body equivalent to the OIG. It lacks adequate oversight by the Ontario Legislature. This was according to a report of the Standing Committee on Finance and Economic Affairs four years ago, which endorsed the view of

former OSC commissioner Glorianne Stromberg in her testimony to the committee. Ms. Stromberg recommended that, as a first step towards providing better oversight of the commission and the other financial regulators for which the OSC is responsible, the Legislature should “establish a standing committee with a mandate to consider not only the five-year review reports, but also the effectiveness of securities laws, the operations of the commission, and financial services generally.”

In its formal recommendation, the standing committee acknowledged that “the status quo is unacceptable” and recommended, as an initial step towards strengthening the oversight of the OSC, that, “Any new oversight mechanism should include a requirement that the annual reports of the commission be automatically referred to a committee of the Legislature and should ensure that the committee has the ability to compel witnesses to appear before it, including the responsible minister.”

Nevertheless, it appears that this recommendation has not been implemented. In December 2005, there was an amendment to section 3.10 of the Securities Act mandating the empowerment of a standing or select committee of the Legislature to review the OSC’s annual report and to report the committee’s opinions and recommendations to the Legislature. Nevertheless, to the best of my knowledge, that hasn’t been implemented.

So it seems there are two issues here: the need to re-establish a properly resourced investor advisory panel and the creation of a standing or select committee of the Legislature to review the OSC’s annual report. If one goes back to the original recommendation, the standing committee would also consider the effectiveness of securities laws and the operation of the commission.

I believe it would be of significant value if the re-constituted investor advisory panel could meet from time to time with the legislative standing committee to discuss investor protection issues directly with the committee members. One thing that led me to think of this was that there was a query brought forward at the previous session in December by Mr. Flynn, where he states: “Where the rubber hits the road for the average investor in Canada, it’s probably the relationship that they have with their own financial adviser. That’s probably what they see this is all about.”

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I very much appreciated that perspective because, in fact, the investor advisory committee did have a dedicated session specifically focused on that topic—the client-adviser relationship. I recall that we touched on issues such as: Are the current proficiency standards adequate to protect client assets from undue depletion? Are the rules being followed and adequately enforced with regard to the management of conflict of interest? There are many issues such as those that the committee, with its members with in-depth experience of retail-investor-dealing-with-retail-investor issues, the forensic financial auditor, the lawyer and so on, were acutely aware of that are occurring in the context of the client-adviser relationship. I think it would be very interesting if

there was a structural upgrading of the Legislature's oversight of the OSC involving a standing committee as well as a reconstituted, strengthened investor advisory panel, if at some point in time this strengthened legislative oversight of the OSC might be in a position to call this panel to attest to current issues and problems that are affecting retail investors and the kinds of issues involved not only with investments but also with the complaint process and the many systemic issues that affect large numbers of retail investors, especially in the current markets.

I'd like to thank you for your time and attention. I'd be happy to answer any questions you might have.

The Chair (Mrs. Julia Munro): We have almost run out of time, but I'm going to ask for one quick question for each caucus. We'll begin with Mr. Flynn.

Mr. Kevin Daniel Flynn: Thank you for the presentation. It was very thorough.

You were talking about the UK consumer panel and talking about the investor advisory panel. As you were talking, I was thinking, "What sort of person would sit on that panel?" What do you see as being the skill sets of that particular person, who, I think you were trying to say, would represent the interests of the average person?

Dr. Pamela Reeve: As I say, there were 140 applications to sit on the original OSC investor advisory committee. I think that many of the individuals who were chosen had past experience in representing investor interests. For example, there was a litigator. Obviously he represented the interests of his clients, but he also made a very interesting submission to the Standing Committee on Finance and Economic Affairs in August 2004 regarding his perspective on the level of proficiency of investment advisers, which he considered to be seriously inadequate. That kind of professional background is very relevant and helpful in this kind of committee structure.

Mr. Kevin Daniel Flynn: So you'd need a combination of someone who's a layperson but has a technical background, has the interest and has the time?

Dr. Pamela Reeve: In the consumer panel in the UK, they do receive a salary. This kind of engagement usually would require a fair time commitment. I think they meet in the UK at least one day a month, if not more.

Mr. Kevin Daniel Flynn: Thank you.

The Chair (Mrs. Julia Munro): We'll move on to Mr. Hudak.

Mr. Tim Hudak: Thank you very much for the presentation. There was a lot of detail.

Given the recent move of the federal government to bring forward a national securities regulator, how many of your recommendations do you think would still apply to the OSC or to the national level? Secondly, you were in the audience during some of the responses with respect to the pursuit of white-collar crime. How can we strengthen that?

Dr. Pamela Reeve: I've seen a proposal for strengthening the intake process on white-collar crime. I believe that is going to be discussed later today by Ms. Diane Urquhart.

The proposal has been brought forward by former Detective Sergeant Gary Logan of the Metro Toronto police force. I think that his proposal is an important initiative that could go a long way toward strengthening white-collar crime enforcement.

Mr. Tim Hudak: Thank you.

The Chair (Mrs. Julia Munro): Mr. Prue?

Mr. Michael Prue: You were in the audience when I was questioning members of the OSC about the 13 members on the panel and the advertisement and nobody coming forward from the investor community. Do you have any comment on what they said? Because I found it was rather exclusionary, if I might put it in those words.

Dr. Pamela Reeve: Sorry, the 13 members—

Mr. Michael Prue: Let me get it exactly right. Every one of the OSC's existing 13 commissioners has the experience for which they're advertising. I asked why they couldn't have a retail investor representative, and they started talking about the necessity of having a set of job skills that were, perhaps, exclusionary of everyone but the group they already had, and I—

Dr. Pamela Reeve: It's interesting that you should ask that, because I did see the ad, and I've actually been thinking about that somewhat more theoretically, in terms of what's called "corporatism." Corporatism occurs where the members of a regulated industry are in some sense incorporated into the regulator. The argument that is often made in that particular case is that in order to regulate the industry, you need to have people who have certain skill sets and a background from that particular industry.

I think there's an important need for a perspective on retail investor issues. There's a sensitivity to those issues. The discernment of conflict of interest, which I think is an important skill set, would make an important contribution to the commission. So I certainly believe that having at least one member on the commission staff as a retail investor, someone who has knowledge of financial matters—it would have to be someone who is aware of the kinds of issues that the OSC deals with and has a certain skill to think about those issues, to reason about them and make judgments about them. That's necessary as well. I certainly think there should be someone there representing the retail investor.

Mr. Michael Prue: Thank you.

The Chair (Mrs. Julia Munro): Thank you very much for being here today.

CANADIAN COALITION FOR GOOD GOVERNANCE

The Chair (Mrs. Julia Munro): I'd like to call now on the Canadian Coalition for Good Governance. Stephen Griggs is the executive director.

Good afternoon, and welcome to the committee.

Mr. Stephen Griggs: Good afternoon, and thank you for having me. I appreciate the opportunity to speak to you.

The Chair (Mrs. Julia Munro): I know from your observations that you know we have 30 minutes in total.

Mr. Stephen Griggs: Yes.

The Chair (Mrs. Julia Munro): The time will be divided among the committee members. You are free to then make your submission and we'll use the time left.

Mr. Stephen Griggs: All right. Thank you very much. You should have in front of you a brief presentation on the views of the Canadian Coalition for Good Governance.

First, you may not be familiar with the coalition necessarily. The coalition was founded just about six years ago by Canada's largest institutional investors—the buy side. We represent over 40 of Canada's largest institutional money managers, including most major pension plans in Canada, many of the largest mutual fund groups, as well as institutional managers. Together, our members manage—at least, at last public count—\$1.4 trillion, which represents a very large percentage of the invested assets of Canadians. To give you a sense of the scale of our members, on average our members control between 25% and 45% of the common equity of every major public company in this country.

The foundation of the coalition is our mission, which is to improve the governance of Canadian public companies, to ensure that they're run in the best interests of shareholders as opposed to other stakeholders, and also to improve the regulatory environment in which they operate, which is the purpose for me being here today.

Moving on to slide 3, what I'd like to do is focus on two issues that are before the Ontario Securities Commission today. The first is the regulatory changes that are needed to create good governance and shareholder democracy in Ontario and Canada. Then the second is to touch briefly, because it's a very complex issue, on the credit crisis and the regulatory concerns that are coming out of that and whether we are in fact regulating the right areas and the right market participants.

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Moving to slide 4: "Good governance of public companies" is a very standard term that is bandied around. What we believe is very important is that directors understand their roles. Directors are the cornerstone of good governance of public companies. Shareholders are not there to run the business. Shareholders are not generally there to, at least in public companies, identify and debate corporate strategy, hire senior executives—or fire them if they don't do a good job. Shareholders are not there for risk management or crisis management; those are roles that the board is engaged to do. We feel what is absolutely critical is to ensure that there is very strong shareholder democracy. In other words, we want to ensure that shareholders have the true right to elect directors or to terminate directors to ensure that the right directors are in place and that they're focused on enhancing shareholder value.

Turning to slide 5: What we feel to be important from a shareholder democracy perspective are really the following four things: First is a practical ability for

shareholders to remove a director; in other words, a credible threat that a director will be or can be removed. The second is that the voting system must reflect the actual shareholder votes and allow shareholders the same proxy access as management has in their management information circular. Third, directors and shareholders must meet regularly to discuss the business and any shareholder concerns. Finally, something that's been in the press recently is that directors should obtain shareholder approval for fundamental changes to the company. I'll go through each of these quickly and try to relate them to some recent initiatives of the Ontario Securities Commission and its fellow regulators at the CSA.

Slide 6: We believe the time has come for the CSA to address shareholder concerns. We have requested in writing to the CSA, the Canadian Securities Administrators, that they move forward very quickly with a number of important and very basic shareholder democracy issues. The first is that there should be a right to actually vote for each director. In other words, the regulator should eliminate the ability for companies to use slate votes where they can propose six or 10, or whatever the number is they want to propose, and you either vote for all of those individuals or you withhold your vote for each of them.

Secondly, you may have heard of the term "majority voting." Under corporate law, shareholders do not actually have the right to vote against a director. They have the right to withhold their vote, which means that you can have one vote for a director and a million votes withheld from the director, and that director is duly elected as a director, which many of you actually might quite like as a process. We feel that in fact we've come up with a policy, which was prepared by a leading corporate lawyer in Canada, which allows a board to adopt a policy that effectively says that if a director receives more votes withheld than votes for, he or she will voluntarily resign and the board will be expected to accept that resignation.

The third point: There are many transformational transactions for which, under current rules, the board of directors does not require shareholder approval, things like very large acquisitions or highly dilutive share issuances, which are clearly, in our view, things that shareholders should be given the right to vote for or against.

The fourth item is access to the management proxy circular. This may seem trivial, but if a shareholder actually wants to, for example, try to change the directors and issue a dissident proxy circular, they are required to pay for that themselves, which can cost anywhere in the range of \$250,000 to \$500,000 to start and can actually run into millions of dollars. So we think that there's a requirement that the regulators permit shareholders to have the same rights as management does by using corporate assets to pay for the proxy circular.

The final point is that the proxy voting system itself actually doesn't work very well. Usually there are more votes cast than shares exist. There is a whole series of issues which I won't get into, but it clearly is an area that requires regulation and enforcement by the securities regulators.

Turning to slide 8: Where are the regulators on these issues? The CSA has requested for comment a replacement for several national policies and national instruments.

The proposed regulatory approach, we fundamentally disagree with, which is essentially to let boards and management decide what level of shareholder democracy is appropriate for their company. After all, it is not their company; it is the shareholders' company, and we think it is fundamentally wrong to be giving this kind of power to boards and to management. This is all under the rubric of proportionate regulation, which essentially is designed to allow small companies to take public capital, as do big companies, and do the right things only if it's convenient for management and cost-free to the company.

Turning to slide 9: We feel quite strongly that implementing basic shareholder democracy concerns will not happen voluntarily at most companies, as it is fundamentally against the self-interests of many boards and management. That being said, over 100 leading companies in Canada have voluntarily adopted our recommendations on giving their shareholders meaningful rights and shareholder democracy privileges. The common refrain we hear from large companies is that they're quite happy to do these things because they're not afraid of their shareholders, they don't mind having votes for or against and are quite happy to live with ordinary democracy.

The other point to keep in mind is that it's quite common for companies to say, "This is all just bureaucratic regulatory mumbo-jumbo and we shouldn't have to do this," and on and on and on. But the reality is, these initiatives that we're talking about don't have to cost anything. Everything has been written. All they have to do is go to ccgg.ca, download the policy, put it into their board minutes and they're done. This is not something that requires a great deal of time and energy or certainly any money on the part of companies.

Turning to slide 10: I thought I would share with you, just to give you a sense of what we are dealing with, some of the reasons that we have been given by companies and boards to avoid shareholder input. We put it into three or four different areas.

One is that many boards believe that they know best, and how could a shareholder possibly understand the kind of board that should be put in place? There's a constant theme that boards should be well balanced and collegial and everyone should get along. My guess is, this particular room would be a good example of effective democracy from time to time, particularly when there are actually real, live disputes that go on. That is not actually something that is often encouraged within corporate boardrooms.

The second point is the usual: "This hasn't been done before. It's untested. We can't possibly adopt this kind of thing."

The third is: "Everything is working just fine. Why do we need to change anything? These kinds of majority director election issues are of questionable interest in Canada." That's kind of ignoring the fact that the largest investors in the country are insisting on these things.

The final is my favourite one as a lawyer. That is somehow that the concept of majority voting is contrary to natural justice, that it would be a "fundamental abuse of the principles of natural justice and contrary to our entire Judeo-Christian system of law" to allow people to vote against their individual directors. I'm trying to give you a flavour. These are real live quotes. We have been out there pushing and pushing and pushing to have large companies in Canada adopt very basic principles.

On to slide 12: Where are the regulators with all of these things? We've identified six or seven key things that relate to shareholder democracy. I'll just run through these relatively quickly. The first is that you need to have competent and knowledgeable directors. That's not something that can be easily regulated, and we're not suggesting that the OSC regulate this particular matter. We do note, however, that in England the FSA is proposing to pre-screen directors for necessary skills, experience and integrity.

The second is that boards should be independent. We believe that boards should be at least two thirds independent directors; in other words, people who are independent of management and are quite comfortable confronting management. There is a proposed definition in the regulatory CSA release, which is an improvement, but it's certainly not perfect.

Moving to slide 13, number 3: there should be a practical ability for a director to be removed by a majority of shareholders, or at least a credible threat. My guess is if each of you had the ability to decide if you wanted to have an election and, if so, you would actually have someone running against you, you would perhaps behave slightly differently than you do today, having real democracy in your ridings.

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We have asked the CSA and, through them, the OSC to prohibit slate votes and to mandate majority voting. We've also asked that shareholders be given access to the proxy circular, much as management of a company has.

We've also, on slide 14, asked that the separation of chair of the board and CEO be mandated. This is now the norm for large companies in Canada, and we see no reason why that shouldn't also be required of all other reporting issuers.

Item five: The voting system should reflect actual shareholder votes. This is an area that is really a practical concern and one that the OSC from an enforcement perspective should be much more active in, as well as the CSA. In fact, just today I received a letter from the CSA on a request we had made in this area, and they said, "Thank you very much. We appreciate your comments, and when we look at a proxy voting system one day in the future, we might look at this issue," which is, in my perspective, clearly an inappropriate response.

Item six on slide 15: There should be regular meetings held between shareholders and directors. There are some technical things relating to full disclosure—FD—rules, which we feel the regulator should clarify.

Finally, as indicated, directors should be obtaining shareholder approval for fundamental changes. We do

have to commend the Ontario Securities Commission for an order that they released in the last month on the HudBay decision. We felt that was completely appropriate, and the TSX, in that particular situation, had made a very significant error in their previous decision, so the OSC really got it right on that decision, and we look forward to seeing the full reasons.

In conclusion, in terms of shareholder democracy, we urge you to urge the regulators to address these key issues. Without real shareholder rights, there really is no assurance that companies will be run in the best interests of their owners. This is relevant not just to big investors like us but to individual investors. In fact, in many respects it's more relevant to a small investor who can't necessarily bring to bear the resources of large institutional investors.

We also would like you to ask the OSC to use its regulatory powers to mandate key aspects of shareholder democracy for all public companies in Canada.

Moving on to the credit crisis—I'll be very brief on this. I'm sure you must be thinking about what the regulator should be doing in this area. We think there are a number of things from a regulatory perspective that went wrong. I apologize that I missed the OSC's presentation, but I gather you spoke a bit about enforcement, and we have some very strong views on that if you'd like to talk about that later.

First, we believe that there is fundamentally a lack of a credible threat of detection and quick prosecution of capital market offences in both our regulatory and our criminal system. The OSC has made some good strides in the last year or two on the regulatory side, but too often things that are really crimes—there are thefts from our capital markets—are not being addressed by the criminal justice system here in our province or really in any provinces across the country. The regulators end up using relatively weak regulatory tools to deal with people who are criminals and who should be run through the criminal justice system.

Secondly, a large part of our markets are not in fact regulated. If you think about the areas of real problems in the credit crisis, you hear things like asset-backed commercial paper, CDOs, mortgage-backed securities—they go on and on—and almost all of these are securities that are not in fact regulated under our current system. We think there should be a lot of consideration given here in Ontario, and probably more importantly with the new national securities regulator, to regulating the entire capital market, because the parts that are unregulated have clearly shown that they have a significant systematic risk to the capital markets of our country.

To give you a sense on that, just before I came, I was looking at Globe Investor. There was a release from Paris by the European Central Bank president calling for a coordinated international framework for regulating hedge funds and credit rating agencies, among other things. This is not an issue just for Ontario or Canada; this is a global issue, and one where I think our province needs to be at the forefront.

Finally, and somewhat related to that, is that regulators were nowhere as there were huge leverage and off-balance-sheet liabilities being created through things like credit default swaps, which are essentially ensuring that a company won't go bankrupt. That's one of the products that took, for example, the global insurance company AIG down.

So the way forward to deal with some of these very large and systematic problems is in really three areas that we think should be focused on by the securities commission. One is enforcement: First, they need to continue to push hard on enforcement. The single regulator should improve markets for investors and the enforcement activities, although creating any kind of new agency I expect will slow down regulatory movement for a period of time until the new organization is up and running. Secondly on enforcement, there needs to be significant improvement in the criminal enforcement of our capital markets. It seems ludicrous to me that you can walk into a bank with a gun and ask for \$20 million and you will go to jail; if you do the same thing in our capital markets, somehow you just did a little something wrong, and maybe you'll get a bit of a punishment or you can't be a director of a public company again. There's a complete lack of proportionality in the way our criminal justice system is dealing with these things.

The second point is re-regulation. The structure and extent of securities regulation has to be rethought, in Canada and globally, in light of the lack of regulation of key parts of our markets. This has to be on a global basis.

Finally, leverage is what has gotten us into this problem to a great extent. There has to be a review of the regulations related to capital requirements for all capital market participants.

So I'll finish there and be pleased to take questions.

The Chair (Mrs. Julia Munro): All right. Thank you very much. We'll begin with the PCs. Ms. MacLeod?

Ms. Lisa MacLeod: Thank you very much. I was very fascinated with your slide number 17: "Credit crisis—what went wrong." You're right; it is on top of everyone's mind here and, in fact, sort of the reason why we decided to bring in the OSC at the beginning in December was the concern of the worldwide financial crisis with respect to credit.

Particularly fascinating was your point that regulators are allowed significant leverage in off-balance sheet liabilities such as credit default swaps. They're essentially insurance that a company will not go bankrupt. Then you go on to say, as one of your ways forward, that we "need to review regulation of capital requirements of capital markets participants." I'd like to know if you could expand a little bit more on that. I thought that was quite valuable, and I think it would be nice to have a little bit more information on that because we should address that at the committee when we begin—

Mr. Stephen Griggs: Sure. It's actually a very complex issue. There are provincial regulators and federal regulators around banking and insurance, which is where a lot of the problems have occurred. That being said, you also have to understand the structure of securities regu-

lation, which is essentially consumer protection legislation—that's what it's all about: investor protection. The act has been structured as the US 1933 act was structured, where, if you are considered to be an investor who is unsophisticated enough to require government's help, the Ontario Securities Commission is there to help you. If you're a sophisticated investor, or we use the term "accredited investor" here in Ontario, then the regulators do not have the power to actually do much.

What we really need to look at is a fundamental change to the structure of the act so that the securities regulators in fact have the power to regulate the entire securities market. That bifurcation of the market may well have made sense in the 1950s or the 1960s when the world was not very interdependent, and no one really would have thought that an accredited investor and an investment he or she would make could have a systematic impact on the entire capital market of our country.

Ms. Lisa MacLeod: If we move to a common regulator—I think we're acknowledging in the province now that Ontario would opt in—how would we as a province be impacted? Most consumer protection legislation is dealt with at the provincial level.

Mr. Stephen Griggs: Securities probably at one point were a provincial matter. Most companies were local. Our companies here in Canada are global businesses. It's a very strange bit of history that we regulate securities on a provincial basis; no one would start today, if you were starting to regulate with what we have. It really doesn't make any sense.

The national regulator is a great first step. The real leap forward is going to be to integrate the regulation of not just the securities industry but also the banking industry, the insurance industry and anyone else playing in the capital markets.

Ms. Lisa MacLeod: Do you think with a national regulator that it could still meet the needs—you're talking about global businesses, but we all around this table represent people who own small and medium-sized businesses as well. Would a national regulator still be able to address regional needs?

Mr. Stephen Griggs: I certainly believe that they can. The regional needs, I think, personally—I'm not necessarily speaking for the coalition. I think it's a bit of a red herring. If a company is going to take money from the public, I think that creates a duty to them to do the right thing on behalf of investors, and whether you are taking a million dollars or a hundred million or a billion, I really don't see why there needs to be much of a distinction made. Certainly, there is no reason in my mind why, for example, a small manufacturing company that goes public in Ontario is any different than a small drilling company that goes public in Alberta or a tech company in BC.

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Ms. Lisa MacLeod: May I ask this question, and it's hypothetical: At this point, we're not sure what provinces will opt in and which ones won't. Being that we are in such close proximity to the province of Quebec, which, I guess—there's speculation that they wouldn't opt in. Are

there any challenges to any of our local markets? I represent an Ottawa-area riding, and of course we're just a bridge away from Quebec. So I guess I would ask you, as somebody who's an expert in the field: Are there any dangers?

Mr. Stephen Griggs: Certainly the strong preference of most market participants is that we have a national regulator. The idea of having a regulator for everyone except Quebec is not ideal. That being said, Quebec regulators in recent years have been very impressive. They've had a lot of foresight and they've been very aggressive on a number of enforcement actions. It's not ideal, but I think you could have a national regulator or a Canadian securities commission that represents seven or eight provinces, and then they would deal directly with the other provinces through some kind of a passport system, similar to what we have today.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on to Mr. Prue.

Mr. Michael Prue: You put down a whole bunch of stuff about shareholder democracy and expanding the roles of shareholders and giving shareholders the same kind of proxy rights as the board of directors, but you haven't dealt with one issue that intrigues me a lot. There's been a huge amount of debate recently about executive pay and executive pay packages. Should shareholders have a say on executive pay? Should shareholders be able to say to the board of directors, "I think that giving this guy"—or this woman, or whoever it is—" \$5-million stock options and a car is going a little overboard"?

Mr. Stephen Griggs: Executive compensation is one of the main priorities of the Canadian Coalition for Good Governance. I personally spend a great deal of my time on that issue. I didn't mention it today because our view is that the details of executive compensation are not something that really can be regulated. What can be regulated is the disclosure of executive compensation. The CSA introduced new rules effective the end of last year which are a significant improvement—probably a 95% solution; they need to be tweaked a little bit here and there. This whole disclosure process started back with Bob Rae, if I recall, and has moved things quite a distance.

Our focus around executive compensation—I'll get to say-on-pay in a second—is to make sure that boards actually focus on principles of executive compensation. We have released for comment draft principles of executive compensation, which I don't think we have time to get into today, but they are available on our website, and we've been getting some very good comments.

On say-on-pay, it is an issue that is a global issue for large shareholders. The coalition is one of the few organizations globally that has not actively advocated for say-on-pay resolutions. What that means is, in some countries, boards are required to put a resolution for the annual meeting of shareholders as to whether shareholders agree or disagree with the executive compensation that was given in the previous year. In a few coun-

tries, that's a mandatory vote. In other words, the compensation actually has to be approved by shareholders. Very few countries have moved that way. I counted a couple in Europe, if I recall. There are a number of jurisdictions in the world that require boards to ask their shareholders, "Do you think we did a good job with our executive compensation?" Most large public companies in Canada have shareholder proposals in place to do that.

Our view, which is an emerging one as we move through our thought process, is that at this point in time, the regulators should not require that every company have a say-on-pay vote. That being said, we do urge our members, where there is a shareholder proposal, to look at it very closely and, where appropriate, to vote against the executive compensation. I think we will see, over the next few months, some shareholder proposals which actually get more than half of the votes. In other words, shareholders will be saying to the boards, "We disagree fundamentally with how you have compensated senior executives." Where we may evolve our policy is to have strong recommendations to boards that they actually be proactive and put voluntarily on their proxies a say-on-pay proposal. So we'll see where it goes.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on. Mr. Flynn?

Mr. Kevin Daniel Flynn: On slide 8 you talked about allowing companies to decide what level of shareholder democracy would be appropriate for them. That's the idea that's being put forward, as I understand it now. I think from your comments we should take that you would much prefer a prescriptive, that we tell companies what level of shareholder accountability you will have if you operate in Canada or in Ontario or whatever the jurisdiction is. Can you give us an example of a jurisdiction where that is in practice today?

Mr. Stephen Griggs: My understanding is that a number of European jurisdictions have these kind of provisions. In the United States, there is a movement toward this. The state of Delaware actually has amended its law to allow companies to have bylaws which effectively require majority voting. So it is a move forward.

Are there other places that are doing exactly what we're saying? I don't know exactly. Every country is a little bit different. Some countries, for example, have a vote for or against. Australia and the UK, I believe, have that kind of provision. North American corporate law seems to have—this is a very arcane area. Very few people pay much attention to this. It's been around for a long, long time. No one actually knows how we ended up where we ended up. It just is there.

Mr. Kevin Daniel Flynn: But there's no evidence from any of the jurisdictions that you're aware of that it's caused any sort of an investment chill or businesses avoiding those jurisdictions?

Mr. Stephen Griggs: No.

Mr. Kevin Daniel Flynn: Going back to slide 17, which Ms. MacLeod was talking about as well, I was intrigued by that. I guess in hindsight we all know what went wrong with AIG today. Could that have happened at the time in Ontario and could it happen in Ontario

today? We had a discussion before you arrived as to what should be in the financial statement and what shouldn't, what's in the annual report. Obviously, in this case, the regulators decided that something could be kept off the balance sheet which in hindsight probably should have been included. Could that have happened in Ontario?

Mr. Stephen Griggs: I'm sure it could have happened in Ontario. One of the key functions of a board that is really just emerging in the minds of many boards is risk management, which is indirectly what you're getting at. If the board is not focused on risk management—in other words, what are the true risks in their business, whether it's balance sheet risk in financial services or other types of risks—it's not going to end up in the financial statements. We've been quite surprised as we talk to boards about, for example, the lack of integration of their compensation systems with risk management systems. You would think, for a financial services business—generally they're risk management machines. That's what a bank or insurance company or most other financial services businesses are. You'd think the boards would have been actively focused on the kinds of incentives they are creating for executives and others within the firm from a risk management perspective. That's an emerging issue, and it's true on a global basis, so I guess we shouldn't be too upset with Ontario companies.

Mr. Kevin Daniel Flynn: No, no. I suppose the question is: To offset that, to protect against that, do you need prescriptive legislation that prevents that or do you need very sharp regulators?

Mr. Stephen Griggs: I think you need a combination of both. You need to have some prescriptive rules. Even from an efficiency perspective, if you're a company and you have "principles," how do you figure out whether you're complying with a principle? If you have a simple rule, you can say, "Okay, yes. We're doing this," or not. If you have a principle, then you have to hire lawyers and accountants and you have to have experts to tell you whether you're following a principle or not.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes the time that's available. We appreciate you coming here today.

ADVOCIS

The Chair (Mrs. Julia Munro): I'd like to call on the representatives from Advocis, if they would come forward.

Good afternoon, gentlemen.

Mr. Kris Birchard: Good afternoon.

Mr. Greg Pollock: Good afternoon.

The Chair (Mrs. Julia Munro): We certainly appreciate your being able to join us here today. As you would know from the previous presenters, we have 30 minutes for you. You may choose to make some comments and the time that remains will be divided equally among the members of the committee. For the purposes of Hansard, I need you to introduce each of you who is going to make any comments or answer any questions. Please begin when you're ready.

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Mr. Kris Birchard: Thank you, Madam Chair. Good afternoon. My name is Kris Birchard and I'm chair of the board of Advocis, the Financial Advisors Association of Canada. As chair of Advocis, I am actually a member and a volunteer of the association and, when not fulfilling my duties as the chair, I am serving clients in private practice as a financial adviser in Ottawa, Ontario.

With me today is Greg Pollock, on my left, who is Advocis's president and chief executive officer, and to my right, Peter Tzanetakis, the senior director of regulatory affairs.

I will speak briefly first, and Greg Pollock will follow next on some recommendations, and we hope to leave as much time as possible for your questions.

We'd like to thank the Standing Committee on Government Agencies for this opportunity to appear and to address the committee with regard to the review of the operations of the Ontario Securities Commission.

An important task of the standing committee is to consider the big picture regarding the OSC's role in regulating the capital markets and its intermediaries and protecting investors. Is the OSC effective in accomplishing those objectives? Does the OSC need more focused direction from the government in order to achieve its objectives?

At its roots, the purpose of the OSC and its role in overseeing subordinate self-regulatory organizations—the SROs, namely, the Mutual Fund Dealers Association of Canada, the MFDA, and the Investment Industry Regulatory Organization of Canada, IIROC—is to protect investors and ensure confidence in and the continued health of the capital markets. The role of the OSC is to ensure that Ontario and Canada have fair, efficient and competitive capital markets and provide a sound environment for savings and investment. This supports growth and efficiency in the Ontario economy.

I'd like to begin by briefly describing Advocis and its members. We are the largest and oldest voluntary professional membership association of financial advisers and planners in Canada. Our association was founded in 1906 as the Life Underwriters Association of Canada. We have more than 10,000 members across Canada, 5,000 of which are in Ontario. Our members are primarily independently contracted to provide financial products and services on a planning platform. Advocis members provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, and long-term care and critical illness insurance to more than a million Ontario households and businesses. Our members are provincially licensed to sell life and health insurance, mutual funds and other securities. They are primarily owners and operators of their own small businesses who create thousands of jobs across the province.

Ordinary Ontarians in all walks of life need financial advice to help them to save, invest and plan for the future. Advocis financial advisers maintain lasting relationships with their clients, based on trust. They take

a long-term-planning perspective and are helping to guide clients young and old, individuals, families and businesses, especially during these times of economic uncertainty and financial market turmoil.

The majority of Advocis members are regulated by provincial securities commissions. The OSC is the key regulatory body for securities intermediaries and dealers and oversees powers delegated to the Mutual Fund Dealers Association of Canada and IIROC. As such, the OSC's priorities, activities and operations directly affect most of our members.

Why are we here today? We submit that you should, in the course of your considerations of how the OSC is doing, consider the following propositions concerning securities regulation and the impact of the regulation on consumer access to financial advice.

First of all, Advocis believes that Ontarians should have ample access to professional financial advice, products and services and financial planning, and should be able to choose among a diverse range of financial service providers.

Secondly, small-business professional financial advisers provide valuable services to Ontarians in delivering financial advice, products and services, and have a significant place in the financial services sector.

Finally, we strongly believe that the current regulatory framework and the direction in which regulation is going does not favour a diverse range of choices for Ontarians and is limiting access to professional financial advisers.

Securities regulation at present is highly prescriptive and rules-based. Costly compliance burdens and prescriptive rules that suit the business model of the large financial institutions and are applied to small-business financial advisers make it increasingly difficult for smaller firms and small-scale professional financial advisers to serve the public.

Regulation has been an important factor in the increasing domination of the financial services sector by large, vertically integrated financial institutions that have an employee-employer business model. In our view, the currently regulatory structure favours these organizations by placing a disproportionately large regulatory burden on small professional financial advisers and small financial services firms.

The increasing regulatory burden puts their businesses at risk due to high compliance costs. It makes professional financial advice less affordable and less accessible. It also creates barriers to entry for new financial advisers coming into the industry. All of this will negatively impact consumers.

We believe that in many instances, higher compliance costs and the increased regulatory burden imposed by regulatory requirements are not adequately justified. Often, when new regulatory requirements are proposed, there is no clear problem or risk to consumers, and the additional rules and compliance costs offer no real consumer protection benefits. This saddles compliant advisers with more and more regulatory compliance costs and increased costs for consumers but provides little benefit.

The net effect of the layering on of regulation, or regulatory creep, is a trend to increased concentration in the delivery of financial products and services by fewer, larger financial institutions and less choice and diversity in the marketplace for Ontario consumers.

I'd like to add a comment about investor education and financial literacy. We believe that the promotion of financial literacy is crucially important. Our members, as financial professionals, spend more time than almost anyone educating Canadians about their finances. A regulatory framework that drives out accredited professional financial advisers will leave investors less able to understand financial matters.

I'd like now to turn to Greg Pollock to highlight for the standing committee some of the more specific issues that we believe the government of Ontario should be considering when thinking about the performance and priorities of the Ontario Securities Commission. Greg?

Mr. Greg Pollock: Thank you, Kris. Regulatory budgets are growing to accommodate the ever-increasing reach of the regulators. Regulation and compliance are often needlessly and increasingly complex, as regulation comes from not only the OSC but through its proxies, the SROs. This is in addition to the regulatory requirements that our members must adhere to, coming from insurance regulators and from federal regulators.

We believe the OSC should place more emphasis on investigation and enforcement of regulatory policies and rules and on punishing bad behaviour, rather than imposing overly burdensome regulations on intermediaries, the vast majority of whom are compliant. Advocis believes that those who perpetrate crimes against consumers should be punished. Failure to deal effectively with massive fraud and to identify and deal effectively with bad actors jeopardizes confidence in our capital markets.

Advocis has, for the past several years, provided input to the OSC on its annual statement of priorities. This year, we also put in a pre-budget submission to the Standing Committee on Finance and Economic Affairs and to the Minister of Finance to make a number of important points and recommendations, many of which highlighted the real consumer and economic impacts of securities regulation. We have provided you with copies of both these documents for your consideration.

The OSC's 2008 statement of priorities states that market failures and other potentially adverse impacts need to be addressed without unduly impairing market efficiency through excessive regulation or costs of compliance. We agree. We believe it is particularly important for the OSC to regulate effectively. One of the most effective ways to protect the interests of consumers is to ensure that they continue to have ample access to professional financial advice. Therefore, we recommend that in providing guidance to the OSC, the government of Ontario should make it a priority to ensure that small-business professional financial advisers and planners continue to be a vital segment of the financial services sector. This will maintain diversity in the marketplace, providing ample choice for consumers and allowing consumers to have access to professional financial advice.

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The government, as well, should direct the OSC to ensure that regulatory initiatives do not place an unfair burden of regulation on small-business professional financial advisers and that regulation does not result in an uneven playing field that favours very large dealers and firms.

There are viable alternatives to the current regulatory approach. Layering more rules and regulations governing how advisers interact with their clients is placing unsustainable burdens on professional financial advisers. We believe that a principles-based approach should be considered. Principles-based regulation focuses on outcomes and offers more flexibility to deal with new circumstances and new products. We recommend that the OSC and the two SROs should consider a principles-based approach to regulation before imposing any new prescriptive rules-based regulation. In the United Kingdom, for example, principles-based regulation has been effectively introduced on the insurance side.

Financial advisers deal directly with consumers, and we strongly believe that any initiative that will change the way advisers are permitted to interact with their clients should have our input. We wish to be actively involved in developing, reviewing and commenting on proposals regarding major policy or rule changes that have a direct impact on our members and the entire adviser community. Getting the approach right in the early stages of policy development is crucial if regulators' objectives are to ensure that the industry embraces specific regulatory proposals being contemplated and the outcome of consumer protection is to be achieved in a balanced manner.

We also note that the Public Appointments Secretariat is currently advertising for candidates to fill three part-time commissioner positions with the OSC. For one position, the ad calls for candidates who have senior experience, such as a CEO or CFO, with a corporate issuer. For another position, the candidates should have significant leadership and management experience with an investment dealer. For the third opening, they want litigation or adjudication experience in securities, corporate or administrative law. What's missing here? Financial advisers.

If the primary priority of securities regulation is investor protection, financial advisers and consumers must be recognized as key, valuable stakeholders, yet the commission seems to have a narrow perspective on who should sit on the commission and what type of background and experience should inform its decisions. In fact, the commissioners come primarily from corporate issuers, investment dealers and securities lawyers from large law firms. Something similar occurs in the decision-making and regulation that is delegated by the OSC to the MFDA in IIROC. It is issuer- and dealer-centric, and in their policy development, financial advisers tend to be consulted as an afterthought.

We believe that financial advisers should be represented on the commission and SRO boards and on the investor education fund. Therefore, we recommend that

the government develop policies and procedures for the OSC and the SROs to ensure that all stakeholders that are likely to be directly affected by regulatory proposals are consulted at an early stage in the policy development process. Furthermore, the OSC should expand its criteria for appointing commissioners.

Effective public policy requires identifying the problem or issue correctly and then using appropriate methods to address it. In some cases, such as the IIROC financial planning rule, rules are being imposed to regulate activities even though no problem has been identified. Therefore, we recommend that the government impose requirements on the OSC and the SROs to ensure that, before implementing any new major regulatory requirement, it develop a clearly articulated statement of the problem that the regulation is meant to address.

The OSC should also conduct robust cost-benefit analyses to assess the likely investor protection benefits and the cost to market participants and consumers. Failure to identify problems that clearly require intervention and failure to assess the impact on market participants and consumers in relation to likely benefits has led to ill-conceived regulatory initiatives, such as IIROC's recently proposed financial planning rule. The details of the rule follow in the text; I'm not going to go there right now.

In conclusion, we believe that the OSC should change its approach and embrace smart, principles-based regulation that recognizes the value of financial advisers to Ontarians. It should recognize financial advisers appropriately as key stakeholders in the regulation of financial services.

We believe the government needs to take a more proactive role in managing the priorities of securities regulation in Ontario, which has a significant impact on intermediaries, consumers and the economy. Finally, we believe the government should offer ongoing direction to the regulators to ensure that Ontarians continue to have access to professional advice and choice in financial services.

Thank you once again for allowing us the opportunity to appear. Certainly, we would be pleased to answer questions through our chair.

The Chair (Mrs. Julia Munro): Thank you very much. I think we have about five minutes per caucus, so we're with the NDP in our rotation.

M^{me} France G  linas: Thank you for your presentation. I caught some of it on TV and some of it live on location. In your pre-budget submission to the Minister of Finance, you asked for reduced regulatory requirements. I think you called it, at the time, streamlining of regulations. Given what we've seen in the US, I would say partly as a result of the laissez-faire approach in financial regulation, and the countless stories from retail investors here in Canada that have been burned by bad advice, do you really think that fewer regulations are in Ontarians' best interest?

Mr. Kris Birchard: Thank you for the question. That's an excellent one. I'm going to make some general

comments and ask my colleagues to comment more substantively on the technical side, as they're the ones who produced that submission.

As an adviser, though, I would say to you that in our practice, when we continue to meet and deal with clients on whatever the issues are with regard to investments or risk management or any of the things that we do with clients, when we talk about streamlining, from my perspective there is much of what is provided today to the client by way of explanation—of their roles, conflict of interest, product suitability, how they can complain, where they can complain, how they can sue advisers—that is so burdensome that the client really doesn't get the message. There is so much to read and to go through and then to understand—what the various instruments are; the products, be they mutual funds or unlisted securities—that we're not doing what we want to do to educate the client properly and let them understand where the pitfalls may lie and what questions they should ask.

I'm going to guess that my colleagues will expand upon that for you, but from my perspective the streamlining will be to become more effective so that the consumers are actually better protected than they are today by being better educated and understanding what it is that's being explained, and not frustrated by more and more letters and explanations and forms that they have to read and perhaps not understand.

Mr. Peter Tzanetakis: I think what we're really calling for is smarter regulation, not necessarily less. So if you take a look at suitability of an investment, for example, we're not suggesting that that be eliminated from the regulatory framework. What we're suggesting is that the regulators should take a fresh look at possibly implementing a principles-based approach. If you compare the investment regulation in Ontario versus the insurance regulation, the insurance regulators have adopted a principles-based approach on product suitability. They've recently conducted a survey and are very pleased with how that's been implemented, not just in Ontario but across the country, with the support of industry groups in promoting the proper outcome for the consumer.

I think, in looking at regulation, what you also need to consider is where the greatest number of complaints are coming from. I think if you look at complaints on the insurance side versus those on the securities side on suitability or other things, you'll probably find that the number of complaints on the insurance side is significantly lower, and that regulatory framework is really principles-based to a larger degree than it is on the securities side. So what we're suggesting is, at a minimum, to look at a fresh perspective on how you regulate the industry with the view of not saddling compliant intermediaries with more and more burdensome regulation.

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Mr. Greg Pollock: Madam Chair, just a final point: Recently, the Hockin report addressed this issue and certainly spoke to the value that they see in moving in this direction with respect to securities regulation.

M^{me} France Gélinas: Just for my own interests and whoever is watching, Canada has the highest mutual fund fees of a lot of countries. A recent study found that the average expense as a percentage of the fund was 2.6% in Canada compared to 1.3% worldwide. In the US, the average is 1.1%. Are you able to explain this? Do you know?

Mr. Greg Pollock: First of all, maybe just to start on that, we haven't examined that study yet. I'm not suggesting that it's not correct, but at the same time, we haven't examined it. I'm sure there are different variables that are used in terms of measuring the MER in different countries.

But it does raise a question. I think it's a legitimate question. I think it's something as an industry we do need to look at.

M^{me} France Gélinas: So is there willingness to look at it and a process to do so?

Mr. Greg Pollock: There are a lot of organizations involved, of course, so I'm sure all of the organizations that will review that report will be looking at examining it. I wouldn't be surprised if there is some downward pressure to make some adjustments if in fact those statistics are correct. Statistics are funny things. You can read them different ways. We haven't examined it yet, but certainly we will be doing that.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on. Mr. Flynn?

Mr. Kevin Daniel Flynn: Thank you for the presentation. You're talking about investor education as being something that perhaps we should do a bit more of, and do it better. Do you support the role of a common securities regulator? I think your organization does. Is that true?

Mr. Kris Birchard: The short answer to that is yes. If allowed, I'll offer some qualifications.

Mr. Kevin Daniel Flynn: Okay. There's a lot of anger out there right now. In a previous meeting, I think I probably said—and the first delegation today reminded us of that. Where the rubber hits the road for a lot of what's happened in the past year is the relationship that an individual has with their financial adviser. Just anecdotally, in talking with friends and family, you get a sense that people are about 30% to 40% poorer than they were about a year ago, and you're hearing things like, "I wonder if I should have a financial adviser. I don't need to pay someone to lose money; I can do that myself." They wonder if their financial adviser made different moves than they made or than they were advised to make. They wonder if the typical portfolio of a financial adviser is the same as their client's.

You must be feeling the heat as an organization. You could go through a year and not have people start to wonder about the advice they got. Do you have any comments about that? Maybe you can stick up for your profession a little bit.

Mr. Kris Birchard: I think it's a great question. In fact, the first article I wrote in our publication, *Forum* magazine, was on that subject. In our firm, we have

actually experienced downturns. Whether it's 40% across the board, I would say no. I don't think anybody in our firm has experienced that. But certainly everybody is off. The world is off everywhere, and we all know that.

I think the point is that investors who have chosen to deal with financial advisers who have put together a plan for them that's based upon objectives, that's based upon a mutual discovery of what the issues are, why we are investing, what is the purpose of it, what are the circumstances as we go along, what is the profile of the client, when will the investment have to be used and for what purposes—the investments can be appropriately structured to meet those goals. At the same, other types of comprehensive financial planning activities would lead to other financial instruments of insurance types, of risk management types, of alternative types of investments, so that as the client is proceeding through the life cycles, starting when they are just starting out a career, building a family, then sending children out, educating them, and folks seeing more in retirement, things are going to change. When you have a system that's based upon an objective-based plan, coupled with the fact that most of the people who are members of our association are dealing with their clients on a regular basis—in other words, they're in touch with them at the very minimum annually, if not quarterly, and when they do that, they're talking about how the plan is being readjusted. They are doing the projections that say, "Here's where we were, here's where we are now, and here's what we're going to do to make sure that we can continue to get there." The experience that we have in our firm, the experience that I have anecdotally in my travels in Ottawa and in speaking with other clients and with other advisers, is that the people who are working on that kind of a platform have no fear of the unknown, which is perhaps the greatest fear of all. They know where they are, they know why they're there in the first place, and all of this is helping and comforting these people to move forward with some kind of confidence and stay with the plan that's there as it's adjusted accordingly.

There's no doubt that people have lost income. That's certainly plain to everybody who's reading any kind of headlines anywhere, be they financial journals or not. But I think those who are working with financial advisers, as opposed to being on their own, are far more comfortable and confident as to what's going to happen to them in the future.

Mr. Kevin Daniel Flynn: Is there any more time left?

The Chair (Mrs. Julia Munro): Yes, you've got a minute.

Mr. Kevin Daniel Flynn: Thank you.

I guess what's on everybody's mind is that a lot of people hung on to their mutual funds during the downturn, and they're wondering if their financial advisers made different moves and didn't tell them to make the same moves. Is there any truth to that at all?

Mr. Kris Birchard: I cannot address what all the financial advisers are doing. I do not have that knowledge at my fingertips. I can tell you anecdotally that what

happens in our firm, quite often, is that when circumstances are similar, the investments that we are making for ourselves are the investments that our clients are making, or certainly in a similar class.

Certainly my daughter, who doesn't take advice from me but takes it from one of my colleagues in financial planning, is not investing the same way I am, because I'm 35 years older than she is, and I may have some different perspectives, and I may have some different risk tolerances etc. She has a long time to be able to come back. Some will tell you that this is the best buying opportunity of her lifetime, whereas in my case I'm a little bit closer to that retirement age and perhaps I'm wanting to be a little bit more conservative. So I think we have to say that I couldn't have identical investments to her, but where the circumstances are similar, in our firm that would be the case.

Mr. Kevin Daniel Flynn: I'm just trying to get free advice here, Madam Chair.

Mr. Kris Birchard: I'd be glad to speak to you any time you'd like.

The Chair (Mrs. Julia Munro): Thank you. We will move on now. Mr. Hudak.

Mr. Tim Hudak: Gentlemen, thank you very much. It's good seeing Advocis back at committee.

I certainly agree with an important principle in your argument, which is to give me, as an investor, or my constituents, choice in who we want to deal with and develop that long-lasting relationship of trust. If you are worried that your broker or your dealer had different stocks than you do—it's a trade-off, right? We want to have a competitive system. I also worry, if it's all the big institutions, that I might not be exposed to a variety of instruments, that they might push their own products particularly. So I appreciate those points.

What I'm going to ask you, though, is: Can you put this more in layman's terms? I know that in your presentation to the finance committee, you had a bit more detail in what you meant by the strict sorts of rules that they're putting in place, as opposed to being principles-based. Can you give some examples that would encumber my relationship with my broker, that may help large institutions but encumber the small business?

Mr. Kris Birchard: I can give you a very quick one, and then I can talk to you about one that has happened recently.

A colleague of mine, who's a former chair of this organization, has a book of business out west that is somewhere in the \$600-million to \$700-million range. He did an internal study of what the cost of compliance was in his practice, and he found it to be equal—this is six or seven years ago—to the trailer fees on an invested account of \$60,000. That's the compliance cost. It hasn't opened up the doors. He has a small firm where there are five or six advisers and 10 staff, as opposed to a place that has 40 or 50 compliance officers and all the infrastructure that they can assemble. So in that particular instance, it makes it very difficult when you think that there have been several more proposals coming forward

since that are going to raise the actual cost of compliance, never mind the thought that, dare we say, we pay ourselves and make a profit. So, if you ratchet that up, there comes a point in time when you're north of \$100,000—and the average invested Canadian is well under that, in the seventy thousands someplace. So we're going to a place where we're making it difficult for average Canadians to get advice.

If we talk about how principles-based—and Peter referred to it—when the Financial Services Commission of Ontario was looking at the conflict of interest, product suitability, and they were starting on a prescriptive platform, it's a terrific example of how the industry worked together. In other words, our association and others in our industry worked with FSCO to come out with this principle-based solution for product suitability that said that an adviser has an obligation to talk about a conflict of interest. That's in every code of conduct that any organization that is accredited, certainly in our organization, would have for its members.

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Then it said that the adviser must explain to the client why this particular product is being recommended and why it's suitable. I'd suggest to you that if I didn't do that, I wouldn't have a job. That's exactly why I'm retained by people. The gentleman over here was asking Mr. Flynn these questions as to why that's the case. There's a perfect example of coming to something that makes sense.

Since then, the commission has surveyed in Ontario and found out that it's actually working for them on this principle for his platform, and it's working quite well. At no added cost to anybody, it's working effectively.

Mr. Tim Hudak: Recommendation 5 talks about making sure there's a clearly articulated statement of the problem the regulation is meant to address, and for OSC to conduct a robust cost-benefit analysis. Those seem to be very sensible pieces of advice. Then you have an example: IIROC's recently proposed financial planning rule. Could you describe to us in layman's terms again what concerns Advocis has with their new rule?

Mr. Kris Birchard: We have a multitude, and I'll do my best to be brief. The first concern we had is that there was no consultation, as we've talked about. It seemed to be an in-house thing and there wasn't anything there. The second one was that it's another attempt to put some burdensome—we refer to a regulatory creep that's going to have a cost. If a dealer is going to sit down and vet and make sure that a financial plan is appropriate and adequate according to whatever the rules are, then there's going to be a cost to that. Yet the dealers themselves aren't resourced to set up—they weren't formulated in the first place to be able to vet those kinds of financial plans. I, as a chartered life underwriter, chartered financial consultant, a CFP with 35 years of experience in the industry, have spent all my time learning how to be able to do that. I have accredited skills and I continue to follow professional development and continue education to ensure that that happens. It doesn't happen inside of

the dealer, so we question the competency of it. Then we would have to question: Is there a conflict of interest? The dealer has a platform of products and services they provide. If the financial plan isn't symmetrical and doesn't coincide in all those areas, have we met with some kind of conflict of interest?

Then there's of course the question of privacy. A client comes to me, shares their soul and all of their interest in where they want to go, and then I have to tell them that we're going to pass all this on to someone in a third party they don't know about, and are we now perhaps going outside of the tenets and the principles of privacy of the client?

Greg wants to make a point as well.

Mr. Greg Pollock: Just one other point: Fundamentally, IROC is set up to deal with financial transactions, to oversee the proper regulatory oversight of financial transactions. This is about planning; it's not about transactions. You sit down with a client, you want to talk about their objectives and so on and what they hope to see over the next 10 years, or 60 years if you're sitting down with a 20-year-old. We don't see that the dealer should be overseeing the planning that the individual adviser is doing. The dealer may want to, in effect, sell their wares through that planner. That's the conflict that Kris is talking about.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes the time we have available. We appreciate your coming here today.

CANADIAN FOUNDATION FOR ADVANCEMENT OF INVESTOR RIGHTS

The Chair (Mrs. Julia Munro): I would now ask the representative of the Canadian Foundation for Advancement of Investor Rights, Ermanno Pascutto, who is the executive director, to come forward.

Good afternoon, and welcome to the committee.

Mr. Ermanno Pascutto: Good afternoon.

The Chair (Mrs. Julia Munro): As you might know, we have 30 minutes set aside. You may wish to make comments, and the time remaining will be divided amongst the caucus. You may begin as soon as you're ready.

Mr. Ermanno Pascutto: Thank you. You may not have heard of the Canadian Foundation for Advancement of Investor Rights because it's a very new organization. It was established last year. It was an idea that came to me one day when the SROs were thinking of what to do with the fine money that they'd collected from disciplinary actions. I put forward a proposal to the IDA and market regulation services, and over a period of two years this proposal evolved and eventually the SROs, which are now merged to create IIROC, agreed to provide funding to start up this organization. In the second half of last year, we actually launched the Canadian foundation, which for short we call FAIR Canada. We want to make it clear that even though we received fund-

ing from IIROC, IIROC has no role whatsoever in the governance of our organization or in the positions that we take.

In terms of introducing myself, I have over 30 years' experience in securities regulation in Canada, in Hong Kong and in other parts of the world. I spent five years as head of staff of the Ontario Securities Commission, and that was at a time when the executive director was not only chief operating officer but effectively chief executive officer of the commission, which is quite different from the structure that we have in place today. I then spent five years as vice-chairman of a newly established securities commission in Hong Kong, and since then I've either been advising people on regulatory issues or advising stock exchanges and regulators. So I have a long experience in this, and the danger of that is that I have an opinion on just about everything.

The submission that we're making to you today came hot off the presses this afternoon, because we ended up changing it today. I will try to skip over some parts of our submission because they have been covered by some of the previous commentators, in particular Pamela Reeve, who spoke about OSC oversight and accountability. Our recommendation there is essentially the same as hers, that the Ontario Legislature should go back to the recommendations that were made some four or five years ago and should improve its oversight of the OSC. This oversight should include a requirement that the OSC table its annual report before a committee, which should have appropriate resources and powers, including the ability to compel witnesses.

I would go one step further and say that the commission should commission or, depending on who has the authority, that the Legislature should commission a regulatory audit of the OSC by securities regulation experts retained by the Legislature and should reconvene the committee once the experts have reported to the committee. I've seen oversight by Legislatures of securities commissions in Canada and in Hong Kong, and it's very, very difficult. The regulators are experts in a particular area; the overseers are not experts. The regulators have enormous resources, and it is very, very difficult to do effective oversight if you're not using the kinds of experts that the securities commissions themselves have. I would like you to consider that.

A couple of the commentators have talked about the lack of diversity in representation on the board of the commission or the commission. I think at least one person brought to the attention of the committee that the OSC, which doesn't have an investor representative on its commission, recently advertised for three vacancies. They wanted these vacancies to come from a listed issuer, a lawyer and an investment banker, with those backgrounds. Of the four senior management of the commission—right now the chair, the two vice-chairs and the executive director—two are investment bankers and two are Bay Street lawyers. I don't think they have a shortage of investment bankers and Bay Street lawyers. If you look at the various committees that they have you'll see

an endless list of investment bankers and Bay Street lawyers. They do not have representation from retail investors. I think that this is a good time for the committee to say that retail investors and shareholders should have adequate representation on the governing body of the commission, and, of the three current commissioners, at least one should be expressly allocated for a retail investor representative.

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Pamela Reeve, who was a member of Ontario's investor advisory committee, has given you a very good history of the advisory committee and how it was set up with great fanfare by the Ontario Securities Commission, which was aware of how the consumer panel had been set up in the UK, which was thought to be a very good model. The commission chose not to follow that model. They followed a much weaker model.

At the time they announced, as I said, with great fanfare, I think this quote may have been read out: "We believe that direct investor input is critical to the health of Ontario's capital markets and we're looking to the IAC to play a key role in our efforts to address issues of importance to retail investors." Well, two years later, the OSC's investor advisory committee was disbanded without explanation or any kind of public announcement.

The standard that the OSC gives to public companies is that you've got to give people the bad news as well as the good news. I think that's a standard that the OSC should be applying to itself: If you're going to make great fanfare about a wonderful thing you're doing, establishing this investor advisory committee, you should tell people that you've disbanded it and you should give an explanation.

So, our recommendation is that the OSC go back to the drawing board, that they implement an independent advisory committee as part of its consultative structure, along the lines of the UK consumer investor panel, and that they should give this committee adequate resources and support and that there should be compensation paid to the members of the committee.

I've discussed this issue with members of the commission, and they've said, "Why should we compensate retail investor members of our committee when we don't compensate the members of our other committees?" My response was, "Oh, you don't compensate the \$800- to \$1,000-an-hour lawyers who sit on your committee as part of their job, or the \$1-million-a-year investment bankers who sit on your committee as part of their job as well; therefore, these volunteers who don't have the resources of an investment bank or a law firm and are not furthering their careers should be required to devote significant amounts of their time on a pro bono basis as they have been doing for many years?"

It's about time the commission started looking at this a little differently and saying: "Maybe we've got to look at retail investors a little differently from how we look at investment bankers and Bay Street lawyers."

We have made some recommendations with respect to restitution and redress for retail investors. Really, we

have gone back to the expert panel, the Hockin report, which made a number of quite sensible recommendations about the OSC having the power to order compensation in a case of violation of securities law so that investors are not required to always resort to the courts; to establish an investor education fund funded by the industry; and to have mandatory participation by registrants in a dispute resolution process of a legislatively designated dispute resolution body.

These changes, because they require legislation, will take some time. In the interim, the committee should consider asking the OSC to follow up on recommendations that have already been made in the past: that IIROC review its arbitration procedures with a view to making them more helpful to retail investors, less costly to investors and more transparent, and that they raise the threshold for cases that can be heard under the arbitration system to a minimum of \$350,000.

Turning to shareholder rights—and this is really what initially led me to propose the creation of this body—when I left Canada in 1989, I thought Canada was really at the forefront of securities regulation. At that point, Hong Kong was the wild, wild west of securities regulation. When I came back from Hong Kong, Hong Kong had become recognized as actually a pretty well-regulated market. I think there was a study recently that said that along with Singapore, it was one of the two top markets in terms of investor protection. In the meantime, while all these other markets have been improving their level of shareholder rights and investor protection, it appeared to me that in Canada we've gone backwards. One of the areas where we've gone backwards is in the area of shareholder rights, particularly in matters that are under the jurisdiction of the Toronto Stock Exchange. A couple of examples—and the reason I ran into these examples is because, on coming back to Canada, I became an investor and I saw the things that were going on with listed companies in Canada. The things I saw were abusive private placements that violated the spirit of the listing rules of the Toronto Stock Exchange but that the Toronto Stock Exchange did nothing about. I saw transactions where shareholder approval was not required, where companies issued shares that resulted in massive dilution and loss of value for public shareholders.

In Canada we have a structure where if two companies that are of comparable size are going to merge, the normal structure is that the shareholders of both companies have an opportunity to vote. But in Canada they've figured out a way where one company becomes the bidder and the other company becomes the target. Now, the target gets a premium for its shares. The shareholders get a premium for the shares and they have an opportunity to vote. The offeror company's shares lose a lot in value. They're not given an opportunity to vote. So only in Canada do we have this perverse result where the people who are given more money have a chance to approve a transaction and the people who have money taken away from them have no say. That, to me, is a pretty perverse result.

The Toronto Stock Exchange consulted the markets on the shareholder approval requirement back in 2007, following the Goldcorp-Glamis controversy in 2006. The consultation concluded long ago; nothing has happened. You have to ask yourself: Why has nothing happened in this area? I think the answer is that the Toronto Stock Exchange is both a regulator and a for-profit listed company. The Toronto Stock Exchange was allowed to regulate listed companies even after it demutualized and became a listed for-profit company itself. There is inherent conflict in the for-profit status of the Toronto Stock Exchange and its role as a regulator. The Toronto Stock Exchange views listed companies, or more accurately the management of listed companies, as its clients. Shareholders do not have any standing before the Toronto Stock Exchange.

In other markets, when stock exchanges demutualized and went public, they addressed these issues. In the UK, when the London Stock Exchange went public and became a listed company, the regulatory function for listing was transferred from the London Stock Exchange to the Financial Services Authority, or the equivalent of the OSC. In Hong Kong, where I have a fair bit of experience—and Hong Kong is not a Mickey Mouse market; in fact, it's larger than the Canadian market and its stock exchange is more valuable than the New York Stock Exchange, so it's a very significant market—when they demutualized and went public, they separated the business side from the regulatory side of the exchange. The regulatory side is overseen by a listing committee, which is a committee of market practitioners, including investor representatives, that's jointly selected by the securities commission and the stock exchange. It does a very effective job.

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It's our view that the regulatory function at the Toronto Stock Exchange should either operate as a separate entity within the Toronto Stock Exchange, with its own board of directors, or that, at the very least, there should be some kind of separation so that it operates independently of the for-profit business side of the exchange. Failing that, responsibility for the regulation of listed companies should be transferred to an independent SRO or to the securities commission.

If there's time, I'd be happy to give you a wonderful example of how for-profit initiatives get expedited and initiatives that involve shareholder rights, investor protection, get delayed and delayed constantly. I'd be happy to give you that example.

This morning, after we finalized our submission, I started reading the *Globe and Mail* and I saw that there was an article in the Report on Business saying, "Schools Have Failed on the Financial Literacy Front." It's written by the chair and president of the Investor Education Fund. It struck me as very important because it actually hits on some of the positions of FAIR Canada on the question of financial literacy, so we decided, at the very last moment, to add in our recommendations on financial literacy, even though we weren't sure they really fell within the mandate of this committee.

What's been happening up until now is that the regulators have been shifting responsibility onto investors. They've been shifting responsibility onto a financially illiterate group of people. They've been saying, "Take care of yourselves, but we'll help you, because we are going to do investor education. We're going to put up a website." I look at it and I ask myself: How is it possible that a financially illiterate person, whether a bus driver or a teacher or even a lawyer, who is busy, has a full-time job, has several kids, is driving the kids to hockey or to ballet practice, who is financially illiterate, is somehow going to become literate by spending a few minutes in front of these websites? I say: It's not going to happen. I think one of the first things that the regulator should do is find out whether all this money that they're spending on adult investor education is money that is effectively used or money down the drain.

The point that's made in this article is one that's very near and dear to my heart, and that is that in Canada we graduate people from our educational system as financial illiterates. We then set them loose and expect them to be able to deal with their own financial future. I think that's a great failing of our system.

I went through the educational system more than 30 years ago. I was not taught a thing about financial literacy. I was taught about trigonometry and calculus and I can tell you I don't remember a thing about those, because they don't come up every day—certainly not in my work; maybe they'll come up in your work. But the thing that would come up, and would be valuable for the rest of people's lives, is having a basic foundation in financial literacy.

Our recommendation is that the Ontario government should take a leadership role in financial literacy and develop and implement a provincial financial literacy strategy, and work with the other governments in Canada to develop a national strategy. This is something that's been done in other countries. The US and the UK both have national financial literacy strategies; we don't in Canada.

Ontario should make financial literacy mandatory in our high school system so that the next generation of Canadians that enters the workforce and enters the financial system has a basic level of financial literacy. And as I said, we should test the effectiveness of the current adult financial literacy, because I think we'd be surprised, or not surprised, by the results of that.

I'd like to leave the rest of the time for questioning.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin with the government member, Mr. Flynn. And just for your information, we have about three minutes for each caucus.

Mr. Kevin Daniel Flynn: Thank you for your presentation. It's good to see you. Thank you for coming today.

Just so I'm clear, your organization supports a single regulator in Canada. Is that accurate?

Mr. Ermanno Pascutto: I think our organization would support a provincial regulator but recognizes the difficulties of getting that done. I think we have to find a

pragmatic solution to that. If we were able to get seven of the 10 provinces to agree, I'd say we should proceed, and we should leave the remaining provinces to retain their provincial securities commissions and work with them. We have to remember: We talk about the United States having a national securities commission, but no one seems to mention that the United States also has 50 state securities regulators. So they have securities regulators both at the federal and state level.

It would not be the end of the world if we moved ahead with a national commission with most of the provinces and perhaps a provincial commission in Quebec and Alberta. I think the national commission could be much more effective at dealing with enforcement issues. I think that the provincial regulators are not that effective at dealing with enforcement issues.

Mr. Kevin Daniel Flynn: You've answered, I guess, the next question I had, then, which was going to be: If you thought we were going to move to a national system fairly quickly, would you still make the changes to the provincial system? You're saying that you think there's room for both and you would make those changes in any event.

Mr. Ermanno Pascutto: I absolutely think that we need to make the changes that we've recommended today to the provincial system. I think that the Hockin report very optimistically looked at the timetable and said "three years." That, I would think, is the earliest that anything could happen. More realistically, I think we're looking at a three- to five-year time frame. More realistically yet, we have to keep in mind that we've been at this for 50 years and we've failed every other time. So there's a very good chance that nothing will ever happen of a national securities commission.

I don't think we should wait three to five years. I don't think we should wait for something that should never happen. I think Ontario has to get on with it and has to improve the lot of Ontario investors right now. I think they have to deal with an investor advisory committee, with investor representation on the commission to improve the representation of a stakeholder that's simply missing from the regulatory system in Ontario.

Mr. Kevin Daniel Flynn: Thank you.

The Chair (Mrs. Julia Munro): We'll move on. Mr. Hudak.

Mr. Tim Hudak: Thanks for your presentation and the way you've organized it. I have some quick questions to get through. You mentioned the importance of the provincial financial literacy strategy, particularly in the era of the shrinking of defined benefit pension programs, right? How would you implement it on a practical basis—an economics course, as part of a business course that's mandatory?

Mr. Ermanno Pascutto: I'm not an education expert. What I think you could do is combine it and make it part of a number of different courses throughout the high school curriculum. But at the end of the day, you'll have taken all the different components so that you've achieved a mandatory level of financial literacy, so you

understand mortgages, RSPs, credit cards, and credit and risk and all those things. So throughout your high school career, and perhaps even in grade school, you add components which at the end of the day will leave you with a basic level of financial literacy when you graduate high school.

Mr. Tim Hudak: You mentioned also redress and restitution for retail investors, and following up on the expert panel report's recommendations so they wouldn't have to resort to the courts. You mentioned the establishment of an investor compensation fund. Are there best practices in other commissions that you would recommend?

Mr. Ermanno Pascutto: The expert panel looked at some experimental things that were being done in other provinces, and some of these things are being experimented with in other provinces. So they're saying, "Why is it that we have a small experimentation in Nova Scotia with the regulator being able to compensate, but it doesn't seem to be happening across the country?"

1700

I'm involved with the Dubai International Financial Centre. When we drafted the rules for Dubai, we gave the regulator the authority to order compensation to be paid to investors where they found that there was wrongdoing. If the regulator finds that there is wrongdoing, why is it that the investor, without the resources, without the power to call for information with their statutory investigation powers, has to start the whole process one more time and has to prove yet again that the financial institution broke the rules in order to get compensated? These are things that are happening around the world. They're not earth-shattering ideas.

Mr. Tim Hudak: You have concerns about the IROC's arbitration procedures. What are the shortcomings there?

Mr. Ermanno Pascutto: There are a number of shortcomings. This is an issue that I think has been addressed by the various committees that have looked at this in the past and by the five-year review that was led by Purdy Crawford. They indicated that there are a number of problems. One of the most basic ones is the \$100,000 threshold. That's a very low threshold. They recommended years and years ago that that should be \$350,000—probably today it should be \$500,000.

A lot of investors don't have great confidence in the self-regulatory system because it's run by an SRO. If you're going to ask me a question about SROs, I actually have a different spin on SROs than, perhaps, some of the other investor advocates—but only if you ask that question.

Mr. Tim Hudak: I think I'm out of time.

The Chair (Mrs. Julia Munro): We're very close. Do you want—

Mr. Tim Hudak: Well, if he wanted to talk about the SROs briefly and—

The Chair (Mrs. Julia Munro): Yes.

Mr. Ermanno Pascutto: Everyone seems to want to criticize the self-regulatory system that we have in this

country. I have seen self-regulation work in London, I've seen self-regulation work in Hong Kong, and it can be made effective. I saw self-regulation operate in Ontario in the 1980s and it was completely hopeless. It was nothing more than an advocacy body for the industry. Times have changed. It has evolved. IIROC is a very different organization than the IDA was a few years ago. We have a self-regulatory system in place. Rather than constantly kicking it all the time, why don't we work to make it work more effectively? IIROC doesn't have powers of investigation like the securities commission has. Why don't we give it better powers of investigation? IIROC doesn't have the ability to collect fines. Members simply drop their memberships and walk away. Why don't we give them the power to collect fines? Why don't we help them become more effective? As long as we have a self-regulatory system in place, let's make it work better.

The Chair (Mrs. Julia Munro): Let's move on to Ms. Gélinas.

M^{me} France Gélinas: I liked your opening comment, when you said, "I have an opinion on just about anything." I'm about to test that.

There have been a lot of reports over the last five or six years: the 2004 standing committee report, the Osborne fairness committee report, and the Crawford report that I think you referred to a few minutes ago. Those reports recommended substantial changes to the OSC and securities laws, but most were not implemented.

Here comes the part about wanting your opinion. In your opinion, what do you figure the roadblocks to change are?

Mr. Ermanno Pascutto: It depends on where the changes are. One of the roadblocks, I think, is that you don't have representation by all the stakeholders on the commission.

One of the major issues that has been discussed is the creation of an independent adjudicative tribunal. I think people have always said, "Well, it's way too hard for us to set up an independent tribunal." Every time someone suggests a federal commission, it's, "We can hold off doing anything," even though everyone says that the current system is perceived to be highly unfair. The OSC is being challenged right now in court on that issue. I helped write the letter to the commission that started this debate a number of years ago.

A very, very simple solution, to my mind, is one that was raised, I think, by the Canadian coalition: Separate the chairman and the CEO functions. The separate tribunal raises difficult issues. Separating the chairman and the CEO functions is very simple. It would reflect the way the OSC operated in the 1980s. In the 1980s, the staff reported only to the executive director. So the executive director was in charge of enforcement, of corporate finance, of registration, of capital markets. The chairman was not involved in live cases. That is the big difference with the situation today. Today, enforcement reports to the chairman; takeovers and mergers, at the

end of everything, reports to the chairman. That's what creates the perception of bias. In the 1980s, when the executive director was effectively the chief executive officer—because all the staff reported to that individual—no one was raising questions about perception of bias, because we were running a two-tiered organization and there was a healthy tension between the staff and the commission. Now, the chairman runs the staff and runs the commission. It's not surprising that people say, "We're not convinced that the system is fair."

The Chair (Mrs. Julia Munro): That concludes the time that we have available. We certainly appreciate you coming here today.

ANITA ANAND AND MICHAEL CODE

The Chair (Mrs. Julia Munro): I'd like now to call on Anita Anand and Michael Code as our next presenters.

Good afternoon, and welcome to the committee.

Mr. Michael Code: Professor Anand just stepped out to go to the washroom. I'm happy to wait for her or to get started, whatever you wish.

The Chair (Mrs. Julia Munro): I think the committee would appreciate you starting, if that's all right with you.

Mr. Michael Code: As you wish.

We come from different backgrounds. I'm a criminal prosecutor and criminal defence lawyer. I've prosecuted cases for the OSC. So my expertise is on the enforcement side. Professor Anand is a securities law expert, so her expertise is on the regulatory side. We thought it would be helpful if we presented jointly so that I can cover the enforcement side and she can cover the regulatory side.

We were invited to attend—we received a phone call from the clerk's office asking us to come—so we don't have a formal presentation to make to you. We're here, at your request, to simply answer your questions and deal with any issues you might have. We haven't been told what it is that you're concerned about or interested in, so I'm going to keep my remarks very brief, and I believe Professor Anand will as well, and leave as much time as possible for you to ask questions of us so that we can be of assistance to you in any matters that are concerning you.

On the enforcement side, the simple point I would make that has concerned me consistently over the last couple of years—and I've spoken out about this many times at public forums and in submissions to the Hockin committee; I assume this is why I was invited—is that capital markets misconduct has both a criminal form to it and a regulatory form to it. The OSC has powers that are regulatory. It does not possess criminal law powers. Criminal law powers are possessed by the police and the Attorney General to prosecute Criminal Code offences. What has happened progressively over the last 20 to 30 years is a slow shift away from the criminal justice system, so that capital markets misconduct now is increasingly treated as the responsibility of the OSC. The

OSC simply is not a criminal prosecutor, and it's unfair to tarnish the OSC with the perception that Canada is soft on capital markets crime and that somehow the OSC is at fault for this. They simply do not have that jurisdiction. That is a police/Attorney General jurisdiction, and we need to reinvigorate the criminal side of the prosecution business when capital markets frauds take place.

1710

If you talk to people in the enforcement business, in the regulators across this country in the 13-odd regulators we've got, they will all tell you that increasingly the cases that are being referred to them are out-and-out frauds and they should be investigated by the police and charged as criminal frauds. Yet our regulatory system is picking up the slack from the criminal law side of enforcement and being forced to treat these straight-ahead frauds as if they were regulatory problems. So the OSC is being cast in a role that's not appropriate for it, as are the other regulators across the country. We need to reinvigorate the criminal side of the enforcement business.

I think the reason this has happened is because over the last 20 years, particularly in the 1990s, when we were getting our budgets in order in the public service both at the federal and provincial levels, there were cuts to police budgets. Whenever there are cuts to police budgets, the way they react is by emphasizing violent crime as opposed to consensual crime. Fraud is very much seen as a consensual crime, where the victim is blamed for the fraud as much as the fraudsman is blamed for the fraud. The police got out of the fraud business and never really got back into it as forcefully as they once had been. In the 1970s and 1980 we had very vigorous criminal prosecution of capital markets frauds, and slowly the police got out of the business because of loss of expertise, loss of budget and just a reprioritizing, that guns and gangs are more important than fraud.

At the same time, capital markets frauds were getting more complex and more difficult to investigate and prosecute, and the securities commissions were perceived as having expertise. They had in-house forensic accountants—these cases all require real accounting expertise—and the regulatory commissions were well-budgeted; they had lots of funds to investigate these cases—and they were very expensive to investigate—and their penalties; the Legislature was consistently jacking up the regulatory penalties.

We now have quite significant regulatory penalties. The fines are up to \$1 million for every violation of securities law in a purely regulatory prosecution. Similarly, if the OSC chose to prosecute the matter under the Provincial Offences Act in provincial court, they could get jail penalties of up to five years less a day and a \$5-million fine. So you can understand why the police got out of the business of prosecuting and investigating criminal frauds, because the securities commissions were there as these very attractive expert bodies with lots of funding and with not-bad penal sanctions available to them through sections 122 and 127.

So we've ended up in this unfortunate situation where we are perceived in Canada as being soft on criminal

fraud compared to the Americans because we've set up a reasonably attractive regulatory system to which the police have simply delegated the whole matter of criminal law enforcement. The recent talk in committee, as you know, has recommended that one of the ways to turn back the clock to the system that existed in the 1970s and 1980s, where there was vigorous criminal law enforcement, would be through a national securities regulator, where you would have the criminal enforcement unit, which is a federal power, the federal criminal law power and the federal police forces and federal prosecutors housed in the national securities regulator together with the administrative enforcement people. They would look at cases in a much more holistic manner and decide that, when it was truly a criminal fraud and should be prosecuted as such, the criminal people would prosecute it, and when it was truly a regulatory matter that could be properly dealt with by civil sanctions such as licensing and regulatory fines and officer and director bans, you'd let the civil side, the administrative side, handle it.

Those are the broad areas in which I'd be happy to discuss with you any concerns you have about current enforcement practices.

The Chair (Mrs. Julia Munro): Professor Anand, did you have some comments to make too?

Ms. Anita Anand: Sure. Thanks so much for having us today. Let me just give you a bit of background. I practised corporate and securities law before I entered academia in 1997. I've been on faculty at Queen's University in Kingston and here at the University of Toronto. I'm now the associate dean of the JD program and an associate professor teaching in the area of corporate and securities law, bankruptcy law and advanced corporate and securities.

I set out that brief background because I think my take on these issues is from the standpoint of one step back. I like to, when I'm teaching, paint the entire regulatory regime for my students, which means that when we're thinking about financial markets and when we're thinking about capital markets, we can't simply look at one regulatory agency, because these markets are comprised of a number of stakeholders, domestic and international, and a number of regulatory agencies and SROs, as we've already heard today. Some of these regulatory agencies have the ability to make mandatory rules; some make and issue guidance. So we're dealing with numerous stakeholders as well as numerous different types of law, what some theorists refer to as "hard law," being mandatory law, and "soft law," which is guidance etc.

What's really important is that, firstly, we can't disentangle securities markets from financial markets more generally. It's important for us to take a look at the regulatory landscape as a whole and try not to simply focus on how to make the system better by focusing on one regulatory agency alone.

Secondly, I think what we've seen from the credit crisis, for example, in the US and in Canada is that we're dealing with complex securities but, unlike previous market downturns in the past, these complex securities

implicate a number of different stakeholders—banks, other financial institutions, and retail investors, not simply retail investors of securities alone but also in terms of their household mortgages. This is a situation that we haven't seen in the past. I think the economic issues and the regulatory issues that we're being confronted with and that you are considering are somewhat unprecedented.

In terms of enforcement, I have also spoken out in the past about the importance of heightening the federal presence through their criminal law powers and the provincial Attorney General's powers in this area. What I mean by that is that the actual legal powers already exist, but I tend to agree with my colleague in analyzing this as an enforcement—that is, as a situation in which there are a number of different types of quasi-criminal and criminal issues that are coming to the fore and not all of them are appropriately dealt with by the Ontario Securities Commission.

It's very important for us to consider that we actually have legal and regulatory infrastructure in place on the criminal side and that that infrastructure isn't wholly being used. Even without the Hockin recommendations going into place, there is room for a heightened federal and provincial Attorney General's presence in the enforcement of criminal fraud.

Those are my basic comments. I can take questions on anything relating to corporate and securities law.

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The Chair (Mrs. Julia Munro): Thank you very much. We'll begin with Ms. MacLeod.

Ms. Lisa MacLeod: Thanks to you both for coming. I have a question for each of you.

Dr. Anand, you just mentioned that there could be a heightened Attorney General response at the provincial level. I'm wondering if you can expand on that. In one of the articles that I had read, our current Attorney General said that he would like to get more aggressive, yet we have been consistently told that many of these matters of a criminal nature are dealt with through federal jurisdiction. So I'd like your take on that.

Ms. Anita Anand: It's a complicated question, and I have to admit that I don't have a lot of information that I would like to have, just from a pure research standpoint. What I think needs to happen is that when a matter comes before the commission or the federal or provincial government, as it were, there is some discussion between these two bodies about what type of situation this is, how the investigation is going to proceed and who's going to bear the responsibility of it. If it is a matter that is definitely of a fraudulent nature, then that is not something that the Ontario Securities Commission, or securities commissions generally, should be taking on. That is not what their legislative power entitles them to do. Their powers in the statute are quasi-criminal in nature only, and the fines and the penalties that are contained in the statute are there with that in mind.

Ms. Lisa MacLeod: Professor Code, when you spoke—and I'll leave it to both of you to answer—you

had mentioned that police today don't focus as much on consensual crimes.

Mr. Michael Code: Consensual crimes, in the sense that an investor hands over his or her money to a fraudsman. The old-fashioned idea in the 19th century was that the victim was a fool; they were responsible for the crime themselves by consensually handing over their money. So there's this old attitude in the law of fraud that fraud is a consensual crime where the victim is as much responsible as the fraudsman. If you're making priorities in a police force as to whether to investigate somebody who has been shot on the street by a gangster or somebody who has given all their money to a fraudulent—

Ms. Lisa MacLeod: Actually, one of the previous deputants made a similar comment: Somebody could go in and rob a bank at gunpoint and they could go and do some hard time, but somebody at a major company could lift a lot more money and just get a slap on the wrist. So it's an interesting point.

But in terms of enforcement, I think that—

Mr. Michael Code: I don't share that view. I think fraud is extremely serious. I'm simply saying that police forces, when prioritizing, will give higher priority to a crime of violence than to a fraud.

Ms. Lisa MacLeod: Right. I just want to extend it, in terms of enforcement because, as we all know, a lot of this is criminal in nature. We've had issues like Bre-X and other, I think, just egregious examples in this province where the OSC has been a little bit slow to respond. But you are right: It would be much better to see some of those cases tried in a criminal court, rather than in the same place where people are getting parking tickets.

Having said that, with a federal regulator, do you see enforcement being improved? I ask both of you this, in light of your comments on policing and, Dr. Anand, your comments with respect to the Attorney General and the federal government needing to get more involved.

Mr. Michael Code: It all depends—if you want me to go first—on there being a properly structured and properly resourced investigative agency.

One of the difficulties right now is that police forces are general police forces. They've got a homicide squad, they've got a fraud squad, they've got a holdup squad, they've got a sexual assault squad, and officers get moved around and transferred. We need to have a special, dedicated policing unit that makes a career of enforcing fraud.

Ms. Lisa MacLeod: Does the RCMP have a similar—I'm just asking.

Mr. Michael Code: Absolutely. Very much so.

Ms. Lisa MacLeod: Do you think that if we move to a federal regulator, it may improve enforcement?

Mr. Michael Code: It could, yes, if you set up a good enforcement agency with a dedicated staff. It would have to be a multidisciplinary staff of police officers, forensic accountants and lawyers, because these crimes are very complex and they need multidisciplinary staffs. You can't have the old-fashioned general service police force investigating major capital markets frauds. You need a

dedicated unit with a number of disciplines, and you need to properly resource it and give them their mandate to go after criminal fraud. Don't be sending them off to guard the dignitaries at the G7 summit or at the Olympics when police officers are needed somewhere else. They should be solely dedicated to capital markets enforcement.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on to Ms. Gélinas.

M^{me} France Gélinas: It has been suggested that the OSC moves too slowly in bringing cases forward; I guess some are large and complex. There have been instances of the Ontario Securities Commission announcing allegations and then waiting for years before they move ahead. What do you think of those delays? What should be done to prevent those delays?

Ms. Anita Anand: I think it really depends on the case you're examining. It happens that in the recent past there have been some high-profile cases in which the facts might bear out your story. But I point to the recent settlement that the OSC reached with the executives of Research in Motion quite quickly, from the time at which there was an announcement of the matter and the actual settlement. In fact, the OSC reached a settlement more quickly than the US Securities and Exchange Commission, and the settlement reached was at a higher amount in the Ontario context. So I don't think that, across the board, the facts in all cases would underpin the statements that you're making.

Mr. Michael Code: It generally depends on whether there's a criminal prosecution going on at the same time. In the example that Professor Anand gave, there were no criminal proceedings extant at the same time, so the OSC could move quickly and deal with the matter as a purely regulatory matter under section 127.

If there are criminal proceedings going on in the criminal courts, then it is customary for the OSC to take certain interim steps, like cease-trading orders, to make sure that an alleged fraudster is not engaged in further activity in the market. You can put some interim remedies in place before the OSC under section 127.

The actual regulatory penalties will generally await the outcome of the criminal case. In cases like Hollinger, where there's a criminal prosecution in the United States, or cases like Livent, where there's a criminal prosecution here in Ontario, or Nortel, where there's a criminal prosecution here in Ontario, the OSC is simply awaiting the outcome of the criminal proceedings, and then they will step in and complete their regulatory proceedings. But they've got interim measures in place. There are officer and director bans and trading bans in place as interim measures while we await the outcome of the criminal proceedings.

Ms. Anita Anand: I might just add that you might counter that and say, "Well, even in the criminal or the quasi-criminal matters, the proceedings seem to be very extended." What's at issue there in large measure is a question of evidence, and what evidence needs to be gathered in order to support the particular elements of the quasi-crime at issue.

For example in the Felderhof case, which has been called an extended litigation, one of the issues was that this material fact, material change and materiality standard had to be proved. That's extremely difficult: to actually meet the elements of whether the information at issue was material within the definition of the act. So, unlike other crimes, where sometimes the evidence can be DNA or forensic and perfectly matched to the point you're trying to prove, you don't have that type of certainty in the securities legislation or prosecution stages.

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M^{me} France Gélinas: So if I hear you well, you feel satisfied that if there is no criminal prosecution going on at the same time, the process works and it is expeditious.

Mr. Michael Code: If there's no criminal prosecution going on at the same time, there's no excuse for delay; that's my point. The proceedings should proceed expeditiously. Even if there is a criminal prosecution going on, the criminal prosecution should proceed expeditiously.

Former Chief Justice LeSage and I just wrote a lengthy report for the Attorney General on long, complex criminal trials, in which we condemn the culture of delay that exists in our courts. I don't want to leave the impression that I'm somehow complacent about delay. I think delay is appalling, and we've got to change the culture of delay that exists in our courts in criminal matters. Certainly, if there is evidence of delay in OSC proceedings when they're not awaiting criminal prosecutions, that's wrong and it should change. I don't have any evidence of that or examples of that. The example Professor Anand gave, the recent case, is a good example of the OSC proceeding quite expeditiously.

Ms. Anita Anand: I guess I would add that we're talking primarily about section 122 versus 127 matters here, but there's a whole other area of securities regulation in the mergers and acquisitions and takeover bids area where the OSC has been known to act extremely expeditiously on the day or on the week of the issue arising—for example, on poison pill cases.

The Chair (Mrs. Julia Munro): We need to move on. Mr. Flynn.

Mr. Kevin Daniel Flynn: Thank you for the presentation. It was a great combination of practical and academic information that I think we all needed.

The expert panel came back and I guess it said that our country endures or enjoys a reputation as being fairly soft on white-collar crime. Yet the World Bank has come back and said we're ranked number 5 in the world when it comes to things like transparency and investor protection. People point out some high-profile cases that they feel were prosecuted in the United States because they couldn't be prosecuted in Canada or they wouldn't be prosecuted in Canada. The previous speaker was talking about the markets in Dubai and Hong Kong. From what you know, from your extensive experience in the field, obviously, is there anybody in the world who has it right? And if there is, who is it?

Ms. Anita Anand: That's a real toughie.

Mr. Michael Code: I should be clear that I'm not one of these people who embraces the American system. I think the American system is very different from ours, and this invidious comparison that's always made as to how tough the Americans are and how weak we are, has never impressed me because I think the Americans do a lot of things wrong in their justice system. I wouldn't want their justice system in this country.

Having said that, there's lots of room for improvement in our justice system. As I said, our Attorney General here in Ontario has just recently commissioned a report as a result of his concerns about there being too much delay in our justice system. He's very committed to making our justice system speedier. If our justice system were speedier, I think the penalties are fine. I think our penalties are much more proportional than American penalties. I think American penalties are generally too harsh, and I don't like the excessively punitive nature of their system. But our system is too slow. We need to fix the delay problem in our courts. We've created a bit of a monster in the criminal justice system right now. There's lots that I've said about that in the recent report to Minister Bentley.

Ms. Anita Anand: But I don't think it's just the question of delay; I think we actually have infrastructure—as I was mentioning, legal provisions in the Criminal Code that can address many of the crimes that Canada is criticized for not pursuing. So I think, to echo what Professor Code has said, that in a sense the Ontario Securities Commission gets penalized and criticized for not pursuing those matters when, if they're true, fraudulent crimes, those crimes should not be in the jurisdiction of the Ontario Securities Commission. That body is not equipped legislatively to deal with that magnitude of criminal action.

If we're being criticized by the IMF and the World Bank etc., we've got to look at our entire regulatory system. We also have to look at our statutes. We have 13 different or separate securities acts, we know that, but we also have separate legislation in each province relating to corporations and a federal corporations statute. Some of the issues that we've been discussing today, for example shareholder approvals and the lack thereof in the securities statute in some instances, aren't just regulated under the securities legislation; there's also corporate legislation that governs shareholder approvals in a variety of transactions, arrangements, private transactions. Anything that requires a fundamental or monumental change in the corporation requires shareholder approval.

I think you've got to look at the regulatory regimes at issue, the regulators themselves and the numerous different, kind of fractured ways in which we regulate corporations in Canada.

Mr. Kevin Daniel Flynn: Thank you, Madam Chair.

The Chair (Mrs. Julia Munro): All right. Well, thank you very much. That completes the time that we have today. We appreciate your being here.

Mr. Michael Code: Thank you very much.

DIANE URQUHART AND GARY LOGAN

The Chair (Mrs. Julia Munro): I'd now like to ask Diane Urquhart to come forward. Members of the committee, I just draw your attention to the fact that you did receive earlier in the day, in your package, two separate pieces from Ms. Urquhart as well as one that was just handed out.

Good afternoon, and welcome to the committee. We appreciate your being able to join us here today. As you know from observation, you have 30 minutes in which you may make remarks, and if there's time remaining, we will take questions from the committee. Please begin.

Ms. Diane Urquhart: Thank you very much, Madam Chair. I'm Diane Urquhart. I'm an independent financial analyst. I'm also working as financial adviser to the ABCP retail note holders under a rep counsel order by Justice Colin Campbell of the Ontario Superior Court of Justice. I've worked 30 years in the investment field in the capacity of research director and analyst, whose primary function is to act on the interests of investors. I have made an extensive submission which you have before you, which is full of facts and figures, but in light of the shortage of time, please take those facts and figures to support the key points of my remarks.

The Ontario members of Parliament have to fulfill the government's public safety mandate. This is to protect life and to protect the money needed to live. As MPPs, you serve your constituents under this public safety mandate.

I have evidence that the Ontario Securities Commission and the investment industry self-regulatory organizations have been facilitating systemic misconduct in the investment industry. As a consequence, the duty before you as members of provincial Parliament is that we must restructure both the securities regulation enforcement system, i.e. the national securities commission, and we must also reform how securities crime policing is done in the province and throughout the country.

The world, and Canada, is suffering the worst economic crisis since the Depression. This economic crisis is a consequence of a financial crisis that has been caused by severe abuses in the credit derivatives markets and in the mortgage markets. A few people in the mortgage and banking and investment industries have made millions of dollars for themselves in a variety of schemes that have mauled investors throughout the world. The schemes have put the financial industry itself in peril. The world economies are being brought down by the financial industry's negligence, by their failure to meet their duties to their customers and even widespread, systemic fraud.

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Today, the representatives of the Ontario Securities Commission have been telling us that they have amongst the best investor protection in the world and that all is well. Everyone in the province knows that this is not the case. There is widespread fear amongst Ontarians, not only amongst those who lost all their life savings or substantial portions in ABCP but also those who are

participants in pension funds, due to the grave deficits that this market crisis has caused, depleted personal retirement savings and, even now, the economic crisis affecting our jobs.

The Ontario pension benefits guarantee fund and the Ontario government are going to be asked to fund billions of dollars of pension fund deficits at companies in trouble. Nortel has a \$2.3-billion pension fund deficit; it's a company that has entered CCAA proceedings. Air Canada has a \$3.2-billion pension fund deficit, and it's suspected that it will enter CCAA proceedings in the coming weeks.

Nortel is not even paying the severance of its terminated employees. These employees, without work and without severance to pay for their families' bills while they look for new jobs, are treated as unsecured creditors in CCAA proceedings.

These filings for CCAA have a lot to do with the financial crisis and the subsequent economic crisis caused by the abuses in the credit derivative markets and mortgage markets.

I can tell you, in working as a financial adviser to the 1,800 families that were hung up in the ABCP crisis, that the CCAA court is a format of protracted negotiations between senior management and very large creditors. It's a very precarious place for retired workers, terminated employees and small investors whose life fate is being dictated in the negotiations occurring within that court setting.

Canada has had two of its own very significant systemic security frauds: income trusts and non-bank asset-backed commercial paper. These two toxic income products have created losses of close to \$60 billion throughout the country. Unfortunately, most of these losses are borne by our pension funds and by our personal retirement savings in seniors' portfolios—people over the age of 50. There have been no sanctions by the Ontario Securities Commission, no actions taken by the self-regulatory organizations in either the income trust or the non-bank ABCP field. I said that I believe there was systemic security fraud in these two products. There have been no criminal securities investigations taken either on the subject of income trusts and asset-backed commercial paper.

Income trusts were found to have been marketed in the United States on a deceptive cash yield. The US Department of Justice introduced a criminal prosecution agreement with a major dealer in America for the same deceptive cash yield that the Canadian marketplace promoted throughout the 2000s. We have \$31 billion of losses in business income trusts in a product that the US found to be criminally marketed, and it's marketed in our country on the same basis.

ABCP: We heard from the Ontario Securities Commission people this afternoon that the matter is settled, that we have a CCAA restructuring that has been executed successfully. Well, how much success is it to have a \$32-billion product that trades in the market—if it trades at all—at 15 cents on the dollar? That's \$27 billion

of losses if people were to try to realize on the value of their asset-backed commercial paper.

In Ontario itself, in all of its entities, if you use the loss estimate based on a longer-term measure of 45 cents on the dollar, the Ontario government and its related municipal and crown agencies have a half-billion-dollar long-term loss on their hands as a result of systemic fraud in the asset-backed commercial paper market.

Earlier today, Mr. Wilson said that the retail market had been cash-settled. Some \$4 billion of the toxic ABCP got into the retail market. Most of the investment banks realized that they had a problem quite quickly and did voluntarily settle—up to \$4 billion of the ABCP that they put into retail accounts and into money market mutual funds. Canaccord and Prudential refused to settle, and I helped them in my capacity as a financial adviser under the Ontario Superior Court of Justice, working with them under a name-and-shame program to get their money back out of Canaccord and Prudential. I'm proud to say that on the basis of the hard work of these people who had had their life savings taken, and through no effort by the Ontario Securities Commission or the Investment Industry Regulatory Organization of Canada, these people got their money back.

I have, in the audience today, a representative of people who owned more than \$1 million, and I'm very sad to say that we have 36 families in the country, over \$400 million of their life savings, in many cases a very high proportion of everything they own, which have not received full cash settlements. They have been hung out to dry as collateral damage. They've lost their rights to sue in the courts. What democracy takes away the right to sue of a family who's had their money expropriated in a toxic product that involves systemic fraud? They're told to chin it up, take the notes, take the 15 cents and take this on behalf of the country that seeks to have this settlement as a form of financial stability for the banks. Why do our 36 families have to lose the vast majority of their life savings so that our banks can show strong balance sheets?

I'm sorry; I'm taking up perhaps too much of the time. But I do want to say that I strongly agree that there is a problem in securities crime policing, and I agree that it's not the Ontario Securities Commission that can be held to account for the problems in securities crime policing. However, I would argue that they need significant improvements within the regulatory environment as well as securities crime policing, and I'm very concerned about the degree to which there is an effort in the past six years to control how securities crime policing has been done in the country.

The top priority for structural change in Ontario, in my opinion, is to support the new independent Canadian securities crime unit to deter both rogue fraudsters and systemic fraud in the investment industry. We have a securities crime unit proposal that has been developed by Gary Logan, who's the former detective sergeant of the Toronto Police Service's fraud squad. Gary, I'd like you to stand up to identify yourself. Gary has 32 years with the Toronto Police Services, with approximately the last

20 years in senior management and senior investigation for the Toronto Police Service's fraud squad, with a specialty in securities crime policing.

Mr. Logan developed a similar system when Ontario had a significant problem with mortgage fraud. He developed a system for the intake and assessment of complaints from people who are defrauded by securities crime—in this case, preparing the preliminary assessment files and determining the protocols by which the investigations would take place by all of the police forces in Canada, not just the RCMP IMET.

We don't have time to get into the details of the problem, but suffice to say that the RCMP IMET was a failure in terms of the initiatives that were taken post-Enron and that part of the reason for the failure, in our opinion, is that they took exclusive jurisdiction and they shut out the investigative capabilities of all of the other police forces in the country: the Ontario Provincial Police anti-rackets, the Toronto Police Service's fraud squad, the Montreal fraud squad, and the Vancouver fraud squad. Mr. Code said they walked away because they thought the regulators were doing the job. Essentially what happened is that the RCMP IMET came in, took exclusive jurisdiction, they stopped phoning and all of the committees that were interactive amongst the police in country stopped.

Let me say that the Investment Industry Association of Canada and the Canadian Coalition for Good Governance, and Mr. Code today, have indicated that they want to have a single national enforcement agency in Ottawa. We are strongly opposed to that. We believe that there must be a complete and independent securities crime system in Canada, it must not be integrated with the securities regulators, and to do so is a model that is designed to fail.

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We believe that Ontario cannot choose the investment industry's path this time. Even the investment industry cannot afford to control securities regulation and securities crime policing any more. The industry has imploded on itself outside of our country, and while it's said that the banks are strong and we've had a better-regulated market, we have devastation amongst our pension funds and amongst our retail customers and our seniors who were sold toxic products for which there is no policing investigation, no regulatory sanction and no obligation—in fact, immunity given to the industry—to pay for the damages that have been caused.

So I'd like to stop there and take questions.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin with Ms. Gélinas.

M^{me} France Gélinas: Thank you for your presentation and thanks for coming. You mentioned a few seconds ago that the national enforcement agency as a division of the new national security commission is a model designed to fail. What is your rationale to say that?

Ms. Diane Urquhart: Gary, do you want to comment on what the problem is with integrating regulatory enforcement with securities crime policing?

Mr. Gary Logan: Thank you for—

The Chair (Mrs. Julia Munro): I would just—

Ms. Diane Urquhart: Oh, he can't?

The Chair (Mrs. Julia Munro): No, no; you can, but I'd just ask you to introduce yourself.

Mr. Gary Logan: Certainly. My name is Gary Logan. I'm a retired former member of the Toronto Police Service fraud squad.

To answer your question, in all the years in investigative functions and responsibilities I've had, to have a successful investigation there must be independent and complete separation of investigative authorities as it pertains to evidence, statements, and Charter of Rights and Freedoms on the criminal side. To have a meshing or a blending of regulatory authority or power, or even the perception, in a criminal investigative capacity under the same roof—and I have seen this in court. At the end of the day there is a stronger likelihood, where there is a crossing or a migration of evidence, that it may be obtained improperly or inaccurately. Then again, there also could be the suppression or the misdirection of an investigation based on investigative authorities and the priorities set on the other side.

So the only way that I've ever seen—and I've done investigations years ago at the Toronto Stock Exchange and I've had a number of successful large investigations, Michael Holoday being one of them, where he was sentenced to seven years. Going into the investigation with the Toronto Stock Exchange, we had a proper document in place at the front end, but over the entire investigation there was never a collaborative operation between the Toronto Stock Exchange and the Toronto Police Service with respect to the overall investigation, and there could not have been. That was tested in court at the end as well, as to how evidence was obtained, how it was used. They follow it, and it's tracked all the way back.

So in answer to your question, to have one overseeing authority controlling both sides of it, the perception alone is terrible and it is wrong.

The other thing is, police should be allowed to do the job that they do. They are independent. They work under the Criminal Code. There's a separate set of rules that they must abide by and follow, as do the regulators. For that purpose, the police should go back to the way they did do business and they've always done business. They have been successful in the business that they have done, and as far as criminal investigations go, police are still open for business. And I can speak—I only left last year. The Toronto Police Service was actively engaged in complex investigations, some of which—very few—seemed to die off after 2003—complex securities investigations. We've never had a problem and we were receiving convictions.

M^{me} France Gélinas: I think we've heard from other speakers that there may not be the resources in the criminal justice system to do the work asked of them, but that's for another time.

I know that you have been critical of the integrated market enforcement team at the level of the RCMP. Is it for the same reason you've just said now?

Ms. Diane Urquhart: I can comment on that, because police usually don't like to comment on other police forces.

I think, in essence, the problem we have with the integrated market enforcement team is that it's a national police service only; it's exclusive jurisdiction. It's the only police agency in the country that does not have a civilian oversight agency in the form of a police board. The Toronto Police Service has the Toronto Police Services Board. Every other municipality that has a police force has a police board. The Ontario Provincial Police has its own board as well.

The RCMP works without a board. Therein lies the lack of public accountability of the RCMP IMET itself. Shut out the rest of the police forces, and you're not using the talent and the expertise. You're also shutting out the capacity for victims to go to their local police in order to lodge complaints. So that's the main criticism.

The securities crime unit: The big attribute in that is that we propose to have 20 expert fraud officers working full-time for the crime unit. Their job is to receive the criminal complaints, to interview the victims, to prepare the assessment files and then to deliver the files for investigation and prosecution to the jurisdictional police force that deserves to do the investigation and prosecution based on whatever is the prior established protocol.

So we're bringing back into the police fold for securities crime work all of the major fraud squads in Canada. I think Mr. Code said that they reduced their resources. We need to build their resources back up and put in place a public safety system that's going to protect the money in pension funds and personal retirement savings.

I know you'll be saying, "You can't protect against market collapses." We have a market collapse that has been caused by systemic fraud throughout the world and also in our own country, so you can have better-operating markets if you can deter systemic fraud.

It's incumbent on us to move forward to this proposal for an independent securities crime system, and that the OPP and the public safety minister and the community services minister basically engage, as necessary, to support the securities crime unit, which we think is required urgently due to the economic crisis and the loss of confidence in the markets.

More importantly, we don't see who's opposed to it. We can't see Quebec opposed, we can't see Alberta and Manitoba opposed, we can't see police forces being opposed, and most certainly your constituents will want to see justice brought to bear against perpetrators of security frauds.

The Chair (Mrs. Julia Munro): Thank you. We'll move on. Mr. Flynn?

Mr. Kevin Daniel Flynn: How much time do we have, Madam Chair?

The Chair (Mrs. Julia Munro): We have four minutes each.

Mr. Kevin Daniel Flynn: Okay, wonderful. Thank you.

Thank you both for your presentations. Just so I'm clear on this, do you agree with a single, national—with a common regulator?

Ms. Diane Urquhart: Yes.

Mr. Kevin Daniel Flynn: Okay. But you don't agree with a common enforcement arm of that regulator?

Ms. Diane Urquhart: That's correct. We think that the new national securities commission should have a strong national regulatory enforcement division, and we think the national securities commission should have proper public accountability mechanisms and audit of the integrity of their regulatory enforcement work, and then police—we want the securities crime unit independent.

Mr. Kevin Daniel Flynn: Okay. That's what I'm getting to next. You've got the regulator in place. Let's look three or four years in the future. They come and say, "Ms. Urquhart, Mr. Logan, you design the enforcement." What would you do?

Ms. Diane Urquhart: A securities crime unit.

Mr. Gary Logan: A securities crime unit.

Ms. Diane Urquhart: We don't want to wait; we want to do it now.

Mr. Kevin Daniel Flynn: But is it the feds and the province and the local police forces?

Mr. Gary Logan: That's correct, and the regional services. The way I look at it is, why are we working strictly with the federal—I mean, after 2003, when IMET came along—and I have great respect for the RCMP; don't get me wrong. What happened after that—and even when Justice Cory spoke to me as well when he was doing his review. I couldn't understand why, when they came along, they actually shut out additional resources that would enhance their ability to do their job.

Section 380 of the Criminal Code, which is fraud—and the Criminal Code is the same book that the RCMP use—is a standardized process across the country. It is the same book, the same criminal book, that every police officer who does investigations has knowledge of and has the ability to enforce. Fraud is no different in that industry than it is with a cheque or than it is with a credit card. So what I want to do is I want to get back what we lost, and that is using the resources that are currently there. People are talking about dwindling resources in fraud units. Well, if the crime's not being reported—like any good businessman, if it's not coming in, then why do we have the additional resources here? Let's allocate. But if the crimes that are occurring are being reported and are being done, then you know something? We will maintain what we have or we may have to bolster it, because police services and the command officers and the boards understand that the money that's obtained through fraud is going through organized crime to other areas. So I won't go there, but—

Mr. Kevin Daniel Flynn: Okay. That's a good answer.

We talked about the RCMP, and you worked for Metro for a number of years. Does the OPP have a role in this?

Mr. Gary Logan: The OPP would have a role in this; Durham; all of the regional police—

Mr. Kevin Daniel Flynn: And what would that role be?

Mr. Gary Logan: Ideally, what we want to do is, we want to, depending on the jurisdictional authority for the crime and where it's to be investigated, each one of the police services, within their operating fraud units, would receive any investigative package for an offence occurring within that area. So what you're doing is you're bringing everybody back to the table, all of the investigators and the criminal CIBs, you're looking at the offences that have occurred, and then a decision is made as to the jurisdictional authority for investigation and prosecution. So what you've just done is, rather than going to a centralized focal point with one agency investigating everything, you've now opened it back up to include everybody who has the same qualifications, the same ability and the same resources to do the job that the single one is doing right now.

Mr. Kevin Daniel Flynn: Very good. Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. Ms. MacLeod.

Ms. Lisa MacLeod: I just wanted to thank Ms. Urquhart and Mr. Logan. I just have one comment, and it is that I really enjoyed your exchange with Mr. Flynn, your answers. I think that is going to help us as we begin our report writing. I just want to thank you one more time.

Mr. Gary Logan: Certainly.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes our business for today. We certainly appreciate the time you took to come here and participate in the process.

Mr. Gary Logan: Thanks a lot.

The Chair (Mrs. Julia Munro): Seeing no other business, this committee stands adjourned. Thank you.

The committee adjourned at 1802.

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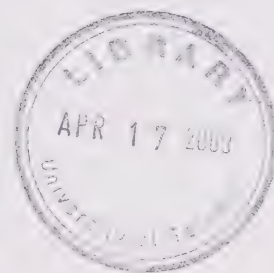
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Official Report of Debates (Hansard)

Tuesday 31 March 2009

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Mardi 31 mars 2009



Standing Committee on Government Agencies

Intended appointments

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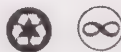
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 31 March 2009

Mardi 31 mars 2009

The committee met at 0903 in room 151.

INTENDED APPOINTMENTS

SCOTT WALKER

Review of intended appointment, selected by third party: Scott Walker, intended appointee as member, Committee to Evaluate Drugs.

The Chair (Mrs. Julia Munro): Good morning, ladies and gentlemen, and welcome to the Standing Committee on Government Agencies. This morning, we are going to begin with the intended appointment review. I'd like to call upon Scott Walker, the intended appointee as member, Committee to Evaluate Drugs. Good morning.

Mr. Scott Walker: Good morning.

The Chair (Mrs. Julia Munro): Welcome to the committee. We have set aside 30 minutes. You may use any amount of that time and then we will go in rotation to ask questions with the remaining time. So if you'd like to make any comment, please begin.

Mr. Scott Walker: I have prepared an opening statement.

I'm a hospital pharmacist. I currently work in the department of pharmacy and the division of clinical pharmacology at Sunnybrook Health Sciences in Toronto. At Sunnybrook, I work in an analytical lab. One of the functions of this lab is to complete stability work on intravenous formulations. In all hospitals in Ontario, many drugs are given intravenously. Generally, the manufacturer recommends, because of the possibility of contamination and bacteria growth, that these products be discarded if they have not been used within 24 hours. However, in many hospitals the products are prepared in a sterile environment and contamination is unlikely. We complete stability studies to demonstrate that many of these products can be kept in the fridge for much longer than 24 hours. If we don't have to discard the medication, we can supply it to another patient and reduce our waste. This saves Sunnybrook about \$150,000 annually. Since we published this data, and it's widely used in every hospital pharmacy in the province, the savings to the system are probably in the millions of dollars annually.

I also have an appointment as an assistant professor at the faculty of pharmacy at the University of Toronto. At the faculty of pharmacy, I've taught pharmacy students pharmacokinetics. Pharmacokinetics describes, in math-

ematical terms, the absorption, distribution and elimination of drugs from the body. Pharmacokinetics serves as the foundation on which bioequivalence studies are completed. Bioequivalence studies are used to evaluate generic drugs prior to approval by Health Canada and prior to listing on the Ontario Drug Benefit Formulary. In this area, I have also served as a member of the Scientific Advisory Committee on Bioavailability and Bioequivalence for Health Canada. This committee advises Health Canada on proposed changes to regulations and the conduct and evaluation of bioequivalence studies, and I've served on that committee since 1995.

As you're aware, I've also served as a member of the Committee to Evaluate Drugs since 1996. On this committee, my advisory capacity has been strongest in two areas. The first was to bring expertise to the committee in the evaluation and review of submissions for generic drugs. Shortly after I joined the committee in 1996, the drug programs branch began a process to streamline the generic approval process. More recently, considerable effort has gone into the evaluation of interchangeable brand name products that were never listed on the Ontario formulary. This so-called off-formulary interchangeability was related to Bill 102, which was passed a couple of years ago.

I think it's important to say that bioequivalence evaluation is not restricted to generic submissions. Questions of bioequivalence and bioavailability become important when a brand name manufacturer wishes to expand their product line, introducing new product strengths or sustained release formulations. I would like to point out that I'm involved in reviewing all generic submission reports and present the reviews for all of these products to the committee for discussion and approval.

The second area that occupies a good deal of my time as a committee member is the review of glucose test strips. This actually fits well with my experience with an analytical laboratory and another course that I've taught at the University of Toronto on drug analysis. Here I'm looking to assure the committee and the drug programs branch that the glucometer test strips provide accurate and reproducible glucose concentrations in diabetic patients and that these results wouldn't be affected by the drugs that the patient was on, the humidity or temperature of the environment. I have reviewed every glucose strip submission in the past eight years.

In summary, I think I bring a unique set of skills to the committee. The expertise of the committee is exceptional and I think the committee provides a valuable and thoughtful service to the Ministry of Health and the people of Ontario. I've always been proud to be a member of the committee.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin with the official opposition. Ms. MacLeod?

Ms. Lisa MacLeod: Welcome, Mr. Walker. I appreciated your presentation to us today, and the official opposition will be supporting your candidacy.

I have a couple of quick questions; I'm just reviewing the materials. The CED makes recommendations to the executive officer on which drugs should be listed. This isn't really about whether or not I think you're suitable to be on the committee, but it is a matter of curiosity. I notice that in 10 instances the CED recommended that certain drugs either be listed or not listed, and the executive officer made in 10 instances a recommendation to do the opposite. I'm wondering how that process works.

Mr. Scott Walker: In some respects, this might be a matter of perspective, although those 10 identified instances in the package imply that the executive officer might have gone against the advice of the committee. Perhaps it's the way the recommendation went forward from the committee. True, the committee could have suggested that we accept it as long as there was a price reduction from the company, or we could recommend that the product be rejected, knowing that in the current process the government then goes forth and tries to create a licensing agreement with the company and obtain a better price. Once this better, lower price is obtained, this actually could make a drug which might appear to initially be financially unattractive to list, reasonable or more reasonable to list. So that document might not identify 10 instances where the executive and the CED are at odds with each other; not at all.

0910

Ms. Lisa MacLeod: So it's less likely that these decisions to make a decision that doesn't reflect the CED's recommendations are more based on price than actual impacts to those who need to take drugs?

Let me give you an example here: Siprale. Its generic name is—and I'm going to get this wrong—Escitalopram—

Mr. Scott Walker: Yes, Escitalopram.

Ms. Lisa MacLeod: —was recommended not to be listed in November 2008, but was listed. That was the decision of the executive officer. In that case, would that be a monetary issue or would it have certain effects that you would have considered to be unacceptable for the Ontario patient?

Mr. Scott Walker: Many of these decisions get into very complicated other side issues. The chemistry involved in this is that there are other products available on the formulary already. They are listed. This drug came in at a higher price and is basically the same drug.

Ms. Lisa MacLeod: I see.

Mr. Scott Walker: The difference from a chemical point of view is that the drug that's listed has both isomers. They talk about this as being right- and left-handed, and one of the two—and this would be the racemic drug—is the common form in which it's available, but after the drug has been on the market, say that the company discovered that only one of these isomers is active, the S isomer, and that's why it's called S or ES, Escitalopram. So the company, then, brings out this new version of the drug. It has the same activity, but it's just very much more expensive. Sometimes there could be a difference in side effects, but I don't believe this was true in this case, so it's possible that in this particular case price actually is the leading and perhaps the greatest issue.

There may be other drugs where a difference in side effects between standard therapy and the new drug is one or another consideration. It may be a difference in how effective the product is. So it doesn't always get down to price, but we end up trying to compare these products—financially is how it ends up having to be done—to determine whether this drug actually provides value to the Ontario taxpayer.

Ms. Lisa MacLeod: Thank you very much. That's very fascinating. I'm not sure if my colleague has any questions at this time.

Mr. Gerry Martiniuk: No.

The Chair (Mrs. Julia Munro): Thank you very much. Ms. Gélinas.

M^{me} France Gélinas: Welcome to Queen's Park, Mr. Walker. I would like to continue the discussion you were having with my colleague. That was not my drug of choice, but given the particular example you have given, the committee made the decision not to recommend it, that it not be listed, but then the executive officer decided to list it. There seems to be a disconnect and a lack of accountability there. How do we bring that back so that when those kinds of reports are published—do you have any idea how it went from your committee saying, "Don't list it," to the executive officer actually making the decision to list it?

Mr. Scott Walker: I don't recall precisely the wording of the recommendation from the committee to the executive officer or the ministry. Following that discussion, there would have been a fairly detailed discussion prior to the vote and the recommendation, but it's very likely that in this discussion, although it might have been, "Don't list the product," and that might have been the recommendation, the side discussion that would have gone on would have said that this product should be priced at a level of the products currently listed, and it was coming in much higher. So the committee, then, recommends that we not list it based on its current price because at its current price it is overpriced relative to its comparator. In this particular case, the government takes that recommendation and enters into a licensing agreement or discussion with the company and says, "The only way you can get this product listed is to bring it down to the price of the comparators." When that is agreed upon,

then the executive officer can list the product and the committee doesn't feel as if we are at odds with any decision made in that particular case because that fit in with the discussion that preceded the recommendation.

M^{me} France Gélinas: Okay. Were you around when Lucentis was—because Lucentis is another one where the committee said, “Don't list it; it is too expensive,” but yet the executive officer listed it.

Mr. Scott Walker: This is another case where there are comparators that have the same side effects and the only difference was price. So, after the listing agreement which brought the price down, yes.

M^{me} France Gélinas: So whether the committee recommends to list it or not list it, the executive officer is still free to negotiate with the drug company whether they will list it or not as long as they only negotiate price? Is this how it goes, or could they also negotiate a change in the formulary of the drug?

Mr. Scott Walker: I didn't understand—a change in the formulary?

M^{me} France Gélinas: You're saying that as long as the Committee to Evaluate Drugs says, “Don't list it,” solely on the price issue, the executive officer is free to go and negotiate the price down with the drug company, and if the price comes down, the executive officer is free to list it? Or could they negotiate other things?

Mr. Scott Walker: First of all, in my view, the CED is an advisory committee. We make recommendations based on efficacy, side effects and price, and I think that it is well within the purview of the executive officer to negotiate whatever they feel is reasonable and can get out of the company to improve the expense of this particular product for the value that it's bringing to patients who receive it. So the acquisition price is one item, but there may be other things that could be negotiated. I'm not sure of the full extent of their leeway and what they can go after.

M^{me} France Gélinas: You have great experience with the CED; you've been there for a long time. Do you figure that it is safe for the Ontario public that the CED is an advisory committee only and not a deciding body? I haven't been in politics very long, but the number of drug companies that have come to advocate for different drugs is overwhelming and I'm thinking that if they come to me, they must go to the executive officer also. If they spend all that time, resources and energy trying to influence my little wee bit of decision-making that I have, knowing nothing about drugs—why is there so much lobbying being done at the level of the political process, and then we see that the people who have the knowledge to make assessments regarding the therapeutic value, the cost effectiveness, the impact, the side effects etc. only in an advisory role? Doesn't that put the public at risk? Shouldn't the CED have more than an advisory role?

Mr. Scott Walker: Perhaps members of the committee might feel initially better if they had complete control, but then they too would be put in the position that you find yourself in—to be, we'll say, lobbied—and they wouldn't have time for this. I have no problem with

the CED being an adviser to the Ministry of Health, and I think that the executive officer can deal with—has to deal with—this lobbying and these efforts, and if you have somebody who has a conflict of interest in the situation—they wish to make money—you can easily see through that. The executive officer often comes to the committee and bears witness to the discussion and would therefore know all of the reasons why the drug is not being recommended for listing. So I'm not sure that this is a decision that is up to me to make.

M^{me} France Gélinas: No. You have been there a long time; I just wanted your opinion.

Have there ever been times where you've seen that a drug that you've done the analysis on, the committee is in consensus that it should not be listed, but yet it got listed and came to the committee as a surprise or caused friction: “Hey, how come this was listed? We clearly said it shouldn't be”?

0920

Mr. Scott Walker: Since 1996, I'm going to say that there have been very few instances—maybe two or three—where the committee was surprised that something got listed. But there may well have been other things in the background, well behind the committee, that determined the listing. I don't think I've ever been aware of why. Maybe it was a lobbying effort; maybe it was lobbying with other things behind it. So it's pure speculation on my behalf on why such things occurred. I don't know that this truly causes friction, because the committee, again, is an adviser to the Ministry of Health, and the Ministry of Health may make the decisions they feel are best suited for Ontarians.

M^{me} France Gélinas: But in the chain of communication, there's no reporting back? If the executive officer makes a decision—the CED says not to list and the executive officer decides to list, there is no communication back to the CED to explain? Wouldn't there be lessons learned in there for the CED, which says, “Well, if we know that the executive officer is of that opinion, maybe we should take that into account when we make our recommendation”?

Mr. Scott Walker: Some of this might be reflected in how—shortly after Bill 102 went into play or became enforceable and we had an executive officer, the process changed a bit, and so maybe with some of the recommendations the committee might initially revise them or revise their stance so that they no longer say, “Accept, but try to get the price down.” They say, “Reject, and bring the price down.” That actually probably gives the executive officer a little bit more clout when they go to the table. So the committee may well have revised the way in which they handle and word decisions. But—well, I'll just leave it there.

The Chair (Mrs. Julia Munro): Thank you very much. We've run out of time. Ms. Van Bommel?

Mrs. Maria Van Bommel: You have definitely demonstrated your knowledge, and we certainly appreciate the fact that you're offering your expertise again to the CED.

My colleague, Liz Sandals, has a question she would like to ask.

Mrs. Liz Sandals: I just wanted to clarify from the discussion we've been having. What I understand you to be saying is that the committee looks at the medical efficacy of the drug, side effects and those sorts of things, and then you also look at the value for money with respect to comparators. When the executive officer has changed the decision, I don't hear you saying that the medical decision has been changed. It's always a question of the price point having been changed, or possibly, as you've said, it's too expensive compared to the comparators, and the executive officer might allow it for exceptional use but not general use. It isn't like your medical advice is being overlooked; it's got to do with the value for money relative to comparators that may shift after it leaves you. Is that a correct assumption from what I'm hearing?

Mr. Scott Walker: Yes, but stated in this fashion, it sounds like price drives everything. The basis on which the value for money is made is through the science of pharmacoeconomics. If I could take you through an analogy, let's say we have a company that wishes to bring forth a new antibiotic. The standard current antibiotic is effective in 75% of the people; it actually achieves cure in 75%. But the new drug is coming on and it appears to have about a 90% effectiveness. We're going to enter sufficient patients into a study and randomize them to either the new drug or the standard therapy and track a number of things: how fast the infection is treated; the number of days in hospital; the acquisition cost of the drug. When somebody fails the drug, they actually have to—because they still have an infection, we're going to have to give them something else, and that will have some cost as well. And we will total up all these costs.

In the ideal situation, this brand new drug, because it cures more people, and maybe faster, and reduces hospital stay, that increased acquisition cost might be justified by the reduction in other costs. In the ideal world, it actually might save the system money, but the reality is that it doesn't truly save money. There will always be, because of the price of the drug, an incremental cost to it. When that incremental cost is very small, the likelihood of a listing is very high. But as the cost of the drug goes up, you could see that the incremental cost of adding this

drug to the formulary would also rise, and we will eventually get to a point where the drug is so expensive—because maybe it isn't 90% effective, maybe it's only 85%. So now we're starting to get to slicing off the roast and things are a little bit tighter, so there's less of a difference between the new drug and the old drug. So we could find a spot where the drug company comes in and says, "We want \$5,000 for every course of therapy." Well, at \$5,000, if there's only a marginal benefit, it's not worth us spending the money. We could not list that drug, continue to recommend the old drug, and everybody would do fine. We might actually save money.

So price affects the overall decision because of this incremental cost, and that price is balanced against side effects and against efficacy. It's bringing those all together that actually allows the committee to make not what I would say is an arbitrary decision with respect to price, but the price is mixed in with side effects and efficacy to come up with a reasonable recommendation that says that we should go forth and list or not list.

Mrs. Liz Sandals: So it sounds to me like the committee is providing highly informed, highly nuanced, very sophisticated advice. Obviously, you're very, very qualified to do that. So thank you very much.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes the time available. We certainly appreciate you coming here today.

Mr. Scott Walker: Thank you very much for having me and letting me speak.

The Chair (Mrs. Julia Munro): We will now proceed to concurrences. We will now consider the intended appointment of Scott Walker, intended appointee as member, Committee to Evaluate Drugs. Ms. Van Bommel?

Mrs. Maria Van Bommel: Thank you, Chair. I would move the concurrence of the appointment of Scott Walker to the Committee to Evaluate Drugs.

The Chair (Mrs. Julia Munro): Concurrence in the appointment has been moved by Ms. Van Bommel. Any discussion? Seeing none, all in favour? Opposed? The motion is carried.

That concludes our business on intended appointments this morning. We will now proceed into closed session for the purpose of report writing.

The committee continued in closed session at 0928.

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Standing Committee on Government Agencies

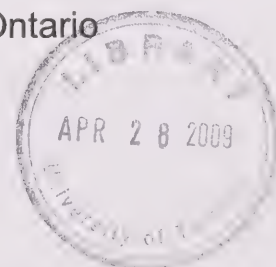
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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 7 April 2009

Mardi 7 Avril 2009

The committee met at 0900 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mrs. Julia Munro): Good morning, ladies and gentlemen, and welcome to the Standing Committee on Government Agencies. Our first order of business this morning is the report of the subcommittee on committee business dated Thursday, April 2. Ms. Sandals.

Mrs. Liz Sandals: You're sounding a little better today, Madam Chair.

The Chair (Mrs. Julia Munro): Thank you.

Mrs. Liz Sandals: I move concurrence in the report of the subcommittee dated Thursday, April 2, 2009.

The Chair (Mrs. Julia Munro): Any discussion? Seeing none, all in favour? Opposed? This motion is carried.

AGENCY REVIEW

ONTARIO SECURITIES COMMISSION

The Chair (Mrs. Julia Munro): Our next order of business is the resumption of our agency reviews. We are very pleased this morning to have with us officials of the Ontario Securities Commission. The Ontario Securities Commission has accepted our invitation to respond to stakeholder presentations made to the committee in February.

Mr. Wilson, welcome back. I'd ask you, for the purposes of Hansard, to introduce those others who may also speak. I understand that you have approximately 35 minutes in which to respond to stakeholder issues, and then the remaining period will be divided amongst the three parties for any comments or questions. Please begin.

Mr. David Wilson: Good morning, Madam Chair, members of the standing committee and ladies and gentlemen. Thank you for inviting us back. As you may recall from our previous meetings, my name is David Wilson. I'm chair of the Ontario Securities Commission. As requested by the Chair, I'll introduce the two gentlemen with me, OSC vice-chairs Larry Ritchie and Jim Turner.

We welcome the opportunity to update the committee and respond to important issues raised by stakeholders when we were last here on February 23. We're providing the committee with a fairly extensive written submission, 37 pages long, but are glad to be able to speak to you

directly as well this morning. Some areas that we'll discuss today have been noted before, but they bear repeating.

First, I would like to provide an overview of our response to the stakeholder comments, which we think can be grouped around four key areas: (1) the global financial crisis; (2) the needs of investors, especially retail investors; (3) the enforcement of securities regulation; and (4) the accountability of the OSC.

I realize that we have a lot of ground to cover this morning, so I'll be as concise as possible. Then I'll ask our vice-chairs to address some specific issues in more detail. As Madam Chair said, we plan to speak for approximately 35 minutes and then take your questions.

Let's begin by addressing what remains at the top of everyone's mind: the current financial crisis. This crisis has been years in the making. It emerged very quickly, and it has taken financial experts, economists and governments by surprise. It will take time and effort for the world to extricate itself from its current difficulties.

As this process unfolds, governments and regulatory agencies have had to take steps to calm markets and restore stability, and the OSC has stepped in to do its part. We have responded promptly and prudently. Since the crisis began, we have closely monitored disclosure by public companies, especially companies that are highly leveraged or are in the critical financial services sector; we've undertaken compliance reviews of money market funds and non-conventional investment funds to assess potential exposure to toxic assets; and we've begun conducting compliance reviews of hedge fund managers to assess any unusual risks. In Ontario, portfolio managers of hedge funds must register with the OSC. This is in contrast to the US, where most hedge fund advisers are exempt from registration.

The OSC is participating in domestic and international initiatives on the governance, disclosure and reliability of a variety of entities in the financial markets during this time of crisis. For example, in October 2008 we issued an asset-backed-commercial-paper consultation paper—an ABCP consultation paper—together with other Canadian securities regulators, recommending that credit rating agencies be required to comply with a global code of conduct, a benchmark developed by IOSCO, the International Organization of Securities Commissions. Jim Turner will tell you more about that in just a few moments.

We continue to monitor events and remain alert to developments in the securities markets, watching for signs of improper conduct. At this time, it is especially important to increase our vigilance to fulfill our mandate, which is to provide protection to investors and foster confidence in the integrity of capital markets. And we continue to be confident that Ontario and Canada have a sound financial sector and a sound regulatory framework. That's backed up by a recent review by the International Monetary Fund. The IMF examined our regulatory system and concluded that it is mature, sophisticated and well managed.

The second area I'd like to talk about this morning is investor protection, which is one half of our mandate, so let me turn to that now.

We believe that good regulation protects investors, and we believe that good regulation comes, in part, from listening to investors. We also believe that informed investors are better equipped to protect themselves and to help us protect them.

We recognize that to serve the interests of all investors, large and small, it's important to obtain their input on securities-related matters, and we're taking steps to obtain that input from both institutional and retail investors.

We've hosted different events to solicit the views of investors, such as an investor town hall and an investor forum. We also set up an investor advisory committee with a two-year mandate. And we've worked with our self-regulatory colleagues, the Investment Industry Regulatory Organization of Canada, known as IIROC, and the Mutual Fund Dealers Association, as well as with the Ombudsman for Banking Services and Investments, to coordinate our efforts. Together, we four organizations have created a permanent joint standing committee on retail investor issues.

These are steps in a continuing process of improvement. We recognize that we have more to do, yet we're well on the way to developing better channels of communications with investors.

For example, we're considering the establishment of an investor secretariat within the OSC. It would identify issues of concern to investors and raise awareness of them within the OSC. It would also examine the best way to obtain retail and institutional investor input. Vice-Chair Larry Ritchie will provide more details on these initiatives in just a few moments.

We recognize that the general public needs to be better educated about investing. This has been the case for some time, but has certainly been highlighted by the current crisis. As a result, we continue to make investor education a priority.

We're working with a variety of partners to promote investor education. These include other Canadian regulators, the SROs, the Financial Consumer Agency of Canada and the Ministry of Education here in Ontario. We're also working with other Canadian regulators and SROs to improve, for example, how investor complaints are handled and how disputes are resolved; disclosure to

investors before they buy mutual funds or segregated funds; and registration standards for advisers and investment fund managers.

The first of these three issues has drawn considerable attention. Although significant improvements have been made, investors continue to raise concerns about complaint handling and redress. We're sensitive to these concerns and we continue to explore options to compensate harmed investors.

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I would like now to turn to our third major issue, enforcement. Enforcement is a key in an effective securities regulatory system. As a result, the OSC has always made enforcement a top priority. However, we also acknowledge, and have acknowledged for some time, that enforcement could and should be better in Canada.

We believe the enforcement framework in Canada is not as effective as it could be because we have too many regulatory authorities: The provincial and territorial regulators, law enforcement, and federal and provincial justice departments are all part of the enforcement mosaic. The OSC and the government of Ontario have long been on record as favouring the creation of a single national securities regulator for Canada, which we feel would enhance regulatory and criminal enforcement. As I have said before, a single national securities regulator will not be a silver bullet that will solve every issue commissions now face separately, but there can be no doubt—no doubt at all—that it would be a step in the right direction. We have welcomed the report of the Expert Panel on Securities Regulation in that spirit.

Until such a single regulator is negotiated into existence, we will continue to work within the framework we have to enforce regulation and uphold the integrity of our markets. Indeed, we're working with provincial and federal governments, other securities regulators, the SROs and law enforcement agencies to strengthen enforcement in Canada. The OSC is committed to co-operating effectively within the current enforcement mosaic.

This standing committee and our minister have asked about new tools that we could use to strengthen enforcement. One new enforcement measure was recently enacted, an amendment that enhances our power to reciprocate enforcement orders from other jurisdictions.

We already have an array of enforcement powers and tools. But as technologies improve, investment products become more sophisticated and markets across the globe become more integrated, regulators need to keep up, because those who would abuse investors are also finding new ways to skirt or breach regulations. That's why we frequently evaluate our tools and enforcement powers and make sure they are up to the job. We're looking at new tools that we'll propose to the minister for his consideration.

Some of these will require legislative amendments. They include:

- creating a framework for regulatory oversight of credit rating agencies;

- strengthening our ability to preserve assets during an investigation;
- broadening the definition of illegal insider tipping; and
- clarifying the OSC's jurisdiction over companies in the US over-the-counter market that engage in manipulative or illegal activities aimed at Ontario investors.

We will continue to monitor our enforcement arsenal to make sure that we have the means at our disposal to foster the integrity of our capital markets. Enforcement has improved, and we're committed to making it even better.

Fourth and finally, since this committee is all about accountability, let's review accountability at the OSC. We recognize that we must be accountable to the people of Ontario, and we are: to the Ontario Legislature through the Minister of Finance; through this committee; and through publicly available documents and filings such as the memorandum of understanding with the minister, our annual report, our statement of priorities and our code of conduct for staff and commissioners. This code of conduct was revised in 2008 as part of the process to meet our obligations to comply with the Public Service Act of Ontario.

We're aligned with the government of Ontario's commitment to strengthen accountability and transparency in the public service. Before we propose any new rules for the minister's consideration, we undertake a careful and open process. We invite comment from the public, we include consultation with stakeholders, and we complete a cost-benefit analysis. It's an open and transparent process.

Finally, the OSC has a strong corporate governance charter. The charter outlines the roles and responsibilities of our commissioners, the board of directors and the committees of that board. It also outlines the process for appointing commissioners through the Public Appointments Secretariat.

All these measures ensure that the OSC operates in full view of the public eye. They give the public, the Legislature and stakeholders a clear understanding of the OSC. They ensure that the public can measure the OSC against its mandate: to provide protection for investors and to foster fair and efficient capital markets.

Thank you for your interest and your attention this morning. I promised I would be brief, so I would now like to introduce Vice-Chair Larry Ritchie, who'll talk in more detail about our focus on investors.

Mr. Larry Ritchie: Thank you, David.

I'm here to speak about some of the issues that you have heard about from witnesses and submissions relating to matters that are most relevant to retail investors. The retail investor is the most vulnerable of market participants, and therefore protecting retail investors is and needs to always be in the front and centre of everything that the OSC does. While we are making good progress and have come a long way, we recognize that there is a lot of work that needs to be done to improve the lot of investors in Ontario. More detail about these initiatives

and what we have been doing is in our written submission, but briefly, here are the things that the OSC is doing for the benefit of investors.

The OSC is committed to improvement of complaint handling and dispute resolution, as David said, both in Ontario and nationally. Through our work with the Joint Forum of Financial Regulators, we're collaborating with OBSI, the Ombudsman for Banking Services and Investments, and others to enhance the dispute resolution process.

As well, we're working with our colleagues at the self-regulatory organizations to better harmonize the complaints process across the country. Both IIROC and the MFDA have proposed policies which impose standards and deadlines on how firms must investigate and deal with client complaints. These proposals have been the subject of lengthy and extensive comment periods. We anticipate that these will be presented to the CSA for approval shortly and will be integrated into the CSA's registration reform project.

On the registration reform project, I should say that that initiative is probably the most ambitious ever undertaken by the OSC and its partners in the CSA. The initiative increases and broadens the oversight of those who deal directly with investors and their money. Among other things, it requires investment fund managers, including those managing hedge funds, to be registered. You've no doubt heard that the G20 leaders committed to enhancing the regulation of hedge fund managers and other market participants who have currently been under-regulated in many markets. Essentially, they're calling for the adoption of the type of requirements that we have long proposed and supported.

Our approach in Ontario places us at the forefront of regulatory reform internationally. We're very proud of the leadership role that we've taken in this area.

Point of sale and mutual fund disclosure: As David mentioned, we're making substantial changes in disclosure for individuals in mutual funds, probably the most accessible investment products available to and marketed directly to individual investors. We've responded to investor feedback seeking simple and clear information about what they're buying, including fund performance, risk factors and costs, by requiring firms to provide investors with a new, two-page plain-language document called Fund Facts. Fund Facts is easy to understand and will be distributed at the point of sale when investors need that information the most, before they make a purchase. The point-of-sale project gives retail investors tools to make proper investment decisions, to make meaningful choices and therefore to be better protected.

The OSC works diligently to investigate and prosecute perpetrators of scams and illegal distributions. The OSC's goal is to take quick and appropriate steps to protect investors before money is lost. In the course of our staff's investigations, if staff become aware of investors who have been victimized, they proactively contact them and alert them to the possibility that they are vulnerable to further scams and further attempts to steal their money.

Through proactive enforcement, we're complementing our oversight function to ensure that investors are protected and that markets remain reliable.

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One of our roles must be to create a more knowledgeable investing public, helping people to protect themselves. We've also been active in reaching out directly to investors, helping them understand the regulatory framework and how to make effective complaints, and helping to increase financial literacy in Ontario and Canada.

Over the past five years, we've spoken directly to almost 83,000 investors at 470 trade shows and community events across this province. We've also distributed over 480,000 investor brochures.

Within the structure of there OSC itself, we've created an investor assistance area in our contact centre to provide investors with access to a team of knowledgeable professionals. This group responds to investor complaints and inquiries and guides them on to how to make an effective complaint.

In 2000, the OSC established the IEF, the investor education fund, with its goal to promote financial literacy in Ontario. Through direct involvement in the school system, as well as with adult learners, they're pursuing that goal. It is funded by fines and settlements from OSC proceedings.

The OSC works closely with the IEF on investor outreach initiatives and in the promotion of financial literacy at all levels of the population. It's also important that we listen to those investors and to seek input to help us do a better job.

As you know and as David mentioned, in 2005, the OSC established an investor advisory committee with a two-year mandate to obtain advice from various parties on issues of importance to retail investors. At the end of the two-year term, the OSC decided that it would not immediately appoint new members to the advisory committee. Instead, we would consider the strengths and shortcomings of the advisory committee forum for retail investor input and investigate a more effective means of obtaining investor input.

In the meantime, as David mentioned, the three regulators, the OSC, IIROC and the MFDA, as well as a fourth party, OBSI, set up the joint standing committee on retail investor issues, a permanent forum to better coordinate and consult on issues most relevant to retail investors. The joint standing committee has sponsored and will continue to sponsor consultation and outreach initiatives to better engage investors on specific issues.

In the fall, we held our first consultation on product suitability issues, and the members have published the results on their websites. We're following up with a subsequent consultation shortly, and the results of that consultation will also be made public.

The establishment of the joint standing committee is one of a number of initiatives through which issues affecting retail investors can be identified and considered and related policy initiatives coordinated and enhanced among the regulators.

We've learned a great deal from the input we received from our town hall and investor forum meetings and our experience with the investor advisory committee, our efforts within the joint standing committee, as well as from a variety of interested persons, including those who testified before you.

We've also been influenced by numerous reports and substantive proposals published on these topics, including most recently in the Hockin commission report.

We're in the midst of working towards realizing three distinct but interrelated initiatives that we believe directly respond to much of what we have heard. Each of these initiatives are at a fairly early stage of development and much work has to be done to pursue them to bring them to operational reality, but raising them with you today should give you a sense of the direction that we're headed.

The first involves, as David mentioned, the setting up of an investor secretariat within the OSC. The secretariat will be like a hub, interacting with the operating branches of the OSC to help them better identify issues of interest to retail investors and to identify and assess the impact of OSC projects on retail investors. The secretariat intends to publish those assessments and encourage responses from the investing public. Overall, the secretariat will sharpen the focus on investor issues at the OSC.

The second initiative is to support and work with the IEF to expand the IEF's outreach initiatives. We support the IEF's leadership role in providing research and related information and tools to the broadest range of consumers and would-be investors. A strengthened IEF will emphasize that it is not only the promoter of effective investor education, but also a retail investor support resource.

The third prong of this three-prong initiative refers us back to our efforts to establish a more effective means through which to receive input from retail investors. We've heard comments from stakeholders on this issue and, in principle, the OSC supports the concept of a funded, independent voice for retail investors. But we also recognize that the UK consumer panel model, which deals at a national level and on all financial matters which are much broader than the OSC's limited jurisdiction, does not fit neatly into our regulatory framework. However, some appropriate structure should and will be found. We're currently in the process of reaching out to third party organizations and universities to assist us with this initiative.

We have greatly enhanced investor protection through good regulation, co-operation with many other regulators in Canada, better enforcement and more expansive resources for retail investors, but there is more work to do, and we are committed to hearing directly from retail investors to find more and better ways to serve and protect investors.

Now I'll turn it over to my colleague, Vice-Chair Jim Turner.

Mr. Jim Turner: Thank you, Larry.

Good morning, Madam Chair and members of the committee. My name is Jim Turner and, as Larry indicated, I'm the other vice-chair at the commission. I will be very brief in my remarks. I wanted to focus on two areas that David touched on briefly in his remarks: first, the regulatory proposals related to non-bank-sponsored asset-backed commercial paper, referred to as ABCP; and then secondly, the OSC's initiatives in the area of corporate governance.

With respect to asset-backed commercial paper, I wanted to talk briefly about the restructuring, which was led by the Pan-Canadian Investors Committee in respect of the non-bank-sponsored ABCP. As you know, that restructuring was completed earlier this year. Secondly, I'd like to talk about the Canadian Securities Administrators' regulatory proposals with respect to non-bank-sponsored ABCP.

With respect to the restructuring, the OSC is pleased that an agreement was reached in January for a private sector—or a mostly private sector—restructuring of the non-bank-sponsored ABCP market. The Pan-Canadian Investors Committee completed the restructuring after complex negotiations that lasted more than a year. Most retail investors in non-bank-sponsored ABCP have been made whole with respect to their principal investment and with respect to interest. Some other investors, a relatively small number and primarily those holding more than \$1 million in asset-backed commercial paper, received restructured longer-term notes on the same basis of other corporate entities and institutions under the restructuring.

The OSC is continuing to review the activities and conduct of manufacturers and distributors of asset-backed commercial paper, and in doing that we're working closely in co-operation with IIROC, the Investment Industry Regulatory Organization of Canada, and with the Quebec AMF. It's not appropriate for us to speculate at this time whether there was a breach of securities laws in connection with the distribution of the ABCP or whether there may have been breaches of other laws.

Let me turn to the CSA/ABCP consultation paper that David mentioned. We are working with our colleagues in the Canadian Securities Administrators to develop proposals to respond to regulatory issues identified as a result of the credit crisis and what happened to asset-backed commercial paper. We issued a discussion or working paper in October of last year requesting comment on a number of regulatory changes. We're currently in the process of reviewing public comment with respect to the proposals we suggested.

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Let me just address, at a very high level, the key proposals from the working paper. First, as I think you know, asset-backed commercial paper is issued pursuant to the commercial paper or short-term-debt exemption. As a result of that, both the issuance and trading of asset-backed commercial paper is not directly regulated by us. In our working paper, we proposed excluding all asset-backed commercial paper from the short-term-debt exemption. In

our view, structured finance products are generally too complex to be issued under that exemption. We do, in conducting our review, however, recognize the importance of the short-term-debt market generally with respect to the raising of capital, and whatever proposals we proceed with, we do not want to interfere with that market any more than absolutely necessary.

With respect to the question of disclosure and access to information, we were concerned, in connection with the asset-backed commercial paper market freezing, that there was insufficient information available to investors with respect to asset-backed commercial paper. Investors in ABCP had trouble getting detailed information with respect to the assets they held. We are proposing to make proposals creating greater transparency for asset-backed commercial paper.

David mentioned credit rating agencies. Credit rating agencies are not currently regulated in Canada. There is legislation in the US that regulates them and there will soon be European legislation doing the same thing. We believe that it's appropriate to impose some level of regulation on credit rating agencies, but we also believe that this regulation should be consistent with the standards being established internationally. So we have proposed a framework for regulating credit rating agencies that essentially requires disclosure and compliance with the IOSCO code for credit rating agencies, IOSCO being the International Organization of Securities Commissions. We are currently participating on an IOSCO taskforce, coordinating internationally compliance by credit rating agencies with regulatory requirements. I might just add that there is only one Canadian-domiciled credit rating agency, and that's DBRS. DBRS is also currently subject to regulation with the SEC.

One of the other issues that is important in this context is the role of intermediaries in connection with the sale of asset-backed commercial paper to retail investors. IIROC, the Investment Industry Regulatory Organization of Canada, regulates investment dealers and intermediaries. We, of course, have supervisory authority over IIROC as a self-regulatory organization. There are existing know-your-client and suitability requirements imposed on IIROC members. In order to comply with those suitability and know-your-client obligations, intermediaries must understand the nature of the products they sell. IIROC concluded, in a report last fall, that some intermediaries failed to comply with that obligation in recommending and selling ABCP to investors. IIROC is currently taking steps to ensure that intermediaries understand their obligations and that appropriate new product review occurs. These matters are also the subject of a current IIROC investigatory review.

With respect to corporate governance, the CSA has proposed new rules with respect to corporate governance; they're out for comment. We are proposing a much more principled-based approach that permits issuers to adopt governance practices relevant to their circumstances. We will also, as part of this initiative, require a higher degree of disclosure with respect to their governance practices.

We will be considering this proposal in the context of the current credit crisis and the comments we have received, so we want to be sure that we understand what is happening around the world in terms of the development of governance principles.

With respect to issues related to shareholder democracy, I think a number of issues were raised with this committee by Stephen Griggs of the Canadian Coalition for Good Governance. The OSC is currently in the process of a significant policy review of a number of issues related to corporate governance. We have received a submission from the Canadian Coalition for Good Governance regarding its recommendations about shareholder democracy and corporate governance. We are considering the CCGG proposals in the context of our broader review. We would point out, however, that a number of the issues raised by Mr. Griggs involve changes to corporate rather than securities laws. In any event, the OSC, in taking this initiative forward, has to consider the interests and views of all stakeholders involved in the process.

That concludes my remarks about ABCP and corporate governance. I'm obviously happy to answer questions. David, I'll turn it over to you.

Mr. David Wilson: Madam Chair, I'll turn it back to you for your questions.

The Chair (Mrs. Julia Munro): Yes, thank you very much. We'll begin with the NDP and Mr. Prue.

Mrs. Liz Sandals: On a point of order, Madam Chair: How long does each party have?

The Chair (Mrs. Julia Munro): We have about eight minutes each.

Mrs. Liz Sandals: Okay. Thank you.

Mr. Michael Prue: Mr. Ritchie spoke about reaching out to the retail investors, but he also made a puzzling statement to me: that the independent advisory committee, along the lines of the United Kingdom—I believe the words were, “wouldn't work here because the structures are different.” How are they that different that it couldn't work here?

Mr. Larry Ritchie: I'm not sure I said—

Mr. Michael Prue: I'm not sure; I didn't write it down. There was a lot of information. I was trying to get it all.

Mr. Larry Ritchie: I appreciate that.

The only point I was trying to make was that in the United Kingdom there is an integrated financial regulator that looks after not just securities issues across the country but also banking issues and other financial issues. The consumer panel, which is their independent form of input—at least, one of them—consists of investor and consumer interests across that broad spectrum and across that national border. Because the Ontario Securities Commission only deals with securities regulation and only deals with securities regulation within the jurisdiction of Ontario, the concept of a consumer panel which is a legislative body with requirements for input doesn't fit neatly—and I think that's the expression I used—into our regulatory framework. We have to find a way to take the

best of those systems and adapt them to the Ontario model. That's the only point that I was making.

Mr. Michael Prue: How long would that take, though? This has been a long advocacy; people have been talking about this for some time, and you're suggesting today it can be done. How long will it take?

Mr. Larry Ritchie: I would say that we're involved in the process now. We're talking to third parties. We're talking to academics and third party bodies that represent investor interests. We hope to be in a position to make significant progress within a matter of months, as opposed to years.

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Mr. Michael Prue: There were statements also made that the advisory committee—let me start again. How, precisely, do you see this being restructured? How do you see this working? If it's ready in a couple of months, how do you see it unfolding?

Mr. Larry Ritchie: Well, that's one of the things that we're exploring.

Mr. Michael Prue: Of course.

Mr. Larry Ritchie: But what we hope to do is to have, unlike a traditional advisory committee—as we mentioned before, the OSC has, I believe, 13 or so advisory committees. The advisory committee structure is set up in a way that provides a forum for specific members of the advisory committee to meet with representatives of the OSC periodically for an hour and a half or two hours on a fixed agenda. In the case of the investor advisory committee experience, we found that a number of the members felt frustrated by the fact that the forum was so limited. So one of the things that we're looking at is broadening that forum, allowing it to be more of a third party, more independent from the Ontario Securities Commission, to provide an opportunity for that group of people to control an agenda, provide an opportunity for them to have direct input on and comment on specific initiatives that the OSC is proposing, with a much broader mandate and broader representation.

Mr. Michael Prue: The OSC may have already filled several positions—I'm not sure what's happened here—on its board with people with good experience, Bay Street experience, but we continue to agree with FAIR Canada's call for a retail investor on the board. I note from pages 8 and 9 of the submission to the Standing Committee on Government Agencies, the rather lengthy document, that that's not part of what you're doing. Can you tell us why?

Mr. David Wilson: I'll answer that, Mr. Prue. We, of course, have discussed this at the last session when we were here, and we saw FAIR's written submission on the subject. The chair of our governance committee and the whole governance committee are aware of the views expressed.

We are in the process of recruiting three new commissioners. The positions were posted on the Public Appointments Secretariat website. The postings expired at the end of February, so we're in the process of going through the candidates. We're assessing all the candi-

dates. There were quite a few candidates, I think over 80 people whose names were submitted, and we're assessing those who have the best qualities to balance the multiple needs of a commissioner to do both adjudicative work and policy work and act as the director of the corporation.

As I think I said last time when you raised this, Mr. Prue, our governance committee does not believe that our commission, which has multiple roles and requires skills in those areas, should be representative of specific industry or interest groups; there shouldn't be quotas for those on the commission. What should be weighed are people with the skills to do the job, and some of those people with the skills to do the job might have particular expertise or knowledge of the issues important to retail investors, so they would be qualified for sure. So there's no prohibition, but there's no quota or attempt to seek a specific person for that purpose. That's what we've attempted to say on pages 8 and 9 of the response in our written submission.

Mr. Michael Prue: I grant that, but most government boards and agencies reach out to make sure they are broadly reflective of the public at large. I understand that this is a complex board with complex issues, but there is nobody there specifically with that kind of training, knowledge and expertise around investor issues.

You have said on page 9 that Vice-Chair Lawrence Ritchie has some of these attributes. What is wrong with having more people with these attributes on the board?

Mr. David Wilson: I think page 8 says that Lawrence Ritchie is the executive sponsor and a strong advocate for retail investor issues at the commission; that's a role that he's assumed, and you heard him speak about that role today. A number of our commissioners have involvement with investor issues in their past. Some of the candidates we're looking at for the three open positions will have experience with investor issues in their past life, so they are knowledgeable and cognizant of investor issues.

I don't think it's accurate, Mr. Prue, to say that none of our commissioners have any experience or knowledge of retail investor issues. That's too sweeping a statement.

Mr. Michael Prue: I don't think I said they have no knowledge, but that's not their focus. The problem we have as a government body looking at this, or at least the problem that I have individually looking at this, is that we have people who come here from FAIR, we have people who come here from Advocis and others who talk about having smaller investors listened to, and I don't think they're going away. I think they will continue to advocate for something which to the general public and certainly to me seems more than reasonable. I don't know your reluctance in not accommodating them.

Mr. David Wilson: We agree with you. You say that there are people who are not going to go away, who want a voice and want input. Commissioner Ritchie here spent seven or eight minutes of his speaking time this morning describing our appetite for having investor input, both institutional investor and retail investor input, and mechanisms we're developing to make sure we get that input

in a constructive way that's well-researched, thoughtful input that can help decide the direction of policy. So there's no objection to your point about making sure we listen to these people who do appear here and talk to this committee. We're more than open and anxious to do that, and we're working on specific things to do it better.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you for being here again this morning to address some of those issues. I know you spoke about this to some extent, but I'm just wondering if we could go back and focus a little bit more on how you respond to witnesses who suggest that the commission does not provide adequate opportunities to investors in the shaping of policy.

Mr. Larry Ritchie: First, I should say at the outset, as I said in my remarks, that we acknowledge that we have to find a better way, a more effective way, an easier way for investors to have input into policy and the things we do at the OSC. As I said earlier, that's one of the things that we're putting a significant amount of resource towards working on.

In the process of policy formulation, one of the major ways to get input is through our public comment period. One of the things that we are trying to do is to facilitate the gathering of the disparate views of retail investors in a sort of funnel so that there can be a way to gather and channel retail investor perspectives to comment directly and specifically on all of our policy initiatives. That really is the core of that third prong and that really is the core of what we're working on, that there can be a facility so that we can encourage the retail investors and their advocates to comment constructively on policy initiatives. That is certainly one of the ways that we're doing it.

Mr. Lou Rinaldi: Just to follow up on that a little bit, you're in the consultation process and you're looking for input. Can you give us some sense of what's next, or the process, I guess? When are we going to get somewhere?

Mr. David Wilson: Larry, why don't you use the point-of-sale project as an example to answer Mr. Rinaldi's query?

Mr. Larry Ritchie: In the point-of-sale project, the initial stages involved a broad consultation with retail investors, with investors who are users or purchasers of mutual funds, to understand what information they need and what information is lacking in our current system. From there, there was a full policy review of the type of disclosure that's available in that area. So at that stage, the Fund Facts document was put together, and then focus groups were set up with retail investors to assess the effectiveness of what was being proposed.

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From that program, our group used that information, formulated the policy, and went out with public comment on a framework which was started through the joint forum of financial regulators: a discussion paper with public comment, small group meetings and more consultation. The next stage will be the publication of a draft rule

which will, again, go out for public comment. The information is assessed, the comments are summarized and published, and the information is assimilated.

Mr. Lou Rinaldi: Thank you. I think my colleague—

The Chair (Mrs. Julia Munro): Mrs. Sandals.

Mrs. Liz Sandals: You had mentioned in your remarks support for a single securities regulator, and I wonder if you could expand a bit on the advantages of a single securities regulator nationally as opposed to the patchwork that we've got today. Maybe you could specifically talk about how the single securities regulator would improve enforcement, but also how it would improve and facilitate the investment climate for the capital markets in Canada.

Mr. David Wilson: Okay, there are several questions there. The question of Canada's need for a single regulator has been debated for 40 years, maybe longer; it's a long debate—

Mrs. Liz Sandals: And we're finally getting somewhere?

Mr. David Wilson: I'm hopeful. There have been many studies done, and the reasons why it's a good idea have been analyzed in great detail. So the first part of your question is a tall order. I'll try to give you the essence of the core reason I believe that Canada needs a national regulator for securities more than ever before.

The truth is that capital markets are not provincial; capital markets are national, and in fact, they have become, as we all have learned, international. So every country in the world except for one, Canada, has a national securities regulator because every country in the world has a national capital market. So in brief form, that's the core reason why Canada should move to a national securities regulator.

I think the second part of your question was, how would such a regulator improve enforcement? I spoke a little bit about that in my formal remarks this morning. The phrase I used in my formal remarks was that while it will undoubtedly improve enforcement, it's not a "silver bullet" and that all the issues about the complexity of enforcement of this country will go away. It would be a good step in the right direction, mainly because you would have a unified enforcement function for the whole country. For example, the resources that would be available in this national enforcement branch of a national regulator would be deployable across the country in all areas, wherever the need was needed for those particular skills, whether it's forensic accounting skills or litigation skills.

So you'd have a depth of resources available to serve the whole country, but there would still be very much local enforcement. A breach of securities law is, in many cases, a local issue, especially when retail investors are involved. I would envisage in a national regulator a very strong local enforcement presence and an overarching, broad capability to cover major, complex cases out of the enforcement branch. So it would be a step in the right direction. Would it solve all of the issues about the complexity of enforcement in Canada? No.

Mrs. Liz Sandals: Does it simplify slightly—because my sense is that one of the issues is the tension between what's securities regulation and what's criminal. Rather than having one intersect, rather than 10 intersects between criminal law and regulation, does that help at all?

Mr. David Wilson: There would be a unified non-criminal body, then, in administrative or securities regulatory authority for enforcement, but there still would be, as you point out, the multiple provincial and federal responsibilities for criminal justice administration. So it would be, as I say, a step in the right direction to simplify the system.

On the securities enforcement side, going from 13 to one would be a simplification, but there still would be the province's criminal enforcement capabilities. However, if you can shrink the number of bodies that are involved from 25 or 30 to 10 or 12, that's a simplification that should make the system easier to coordinate, operate and function.

The Chair (Mrs. Julia Munro): Thank you very much, and we'll move to Ms. MacLeod.

Ms. Lisa MacLeod: I want to welcome you back to committee. It's been a real pleasure. We've come a long way since December, and I want to personally commend you for doing such due diligence on all of the questions that we've asked. By far, and I'd like this noted in our committee report, of all the agencies that we've called, with the exception of one, you've gone above and beyond and I want to thank you for that, particularly during these difficult economic challenges that our province and our country are facing right now.

I have a few questions based on today's presentation and a few that were based on last month's. The first one is—and I guess it interlopes from our last meeting. Mr. Wilson, you suggested that this crisis has been years in the making, which I agree with, but it emerged very quickly and it has taken financial experts, economists and governments by surprise. Wouldn't the definition of a recession be two back-to-back quarters of negative growth?

Mr. David Wilson: I believe that is the classic economist's definition of a recession, yes.

Ms. Lisa MacLeod: I say this because for the last year and a half, our previous leader, John Tory, consistently warned this current government that we were on the verge if not in a recession several times based on that classical definition. So as a result of that—I know in our last meeting when I asked this question you had spoken with the Minister of Finance—I'm wondering, during that period of time, when we started to see Ontario enter into these continuous periods of negative growth about a year ago, were you on the phone weekly with the Minister of Finance?

Mr. David Wilson: No, I was not on the phone weekly with him on the subjects that you talked about. Our mandate is narrower than I think you're describing, Ms. MacLeod. As I said in my remarks, it's protection of investors and integrity of Ontario capital markets. So

those are the matters within that mandate that I discuss with the minister.

Ms. Lisa MacLeod: And a fair point. That said, at that time I also remember the ABCP issue coming to the Legislature during question period, because that's when concerns started to arise. I think when you're looking at a dip in the economy, investor confidence started to go down not only in this province, of course, but across the world. That's why I'm wondering, with the current economic context—and the previous economic context I don't think was much of a surprise to anybody—if you were having those discussions.

But I just would like to move on. The last meeting that we had, you had spoken with the Minister of Finance. Have you yet briefed cabinet on the economic circumstances and how they are impacting the investor climate in the province?

Mr. David Wilson: No, we have not been invited to address cabinet. We have very frequent discussions with the officials in the Ministry of Finance and I speak to the minister regularly. I had a meeting with him last week.

Ms. Lisa MacLeod: Okay, thank you. That actually is a nice gateway into what I'd like to talk about next, and it's the legislative amendments. When we started this process in December, we were asking for specifics from you. So today I'm very pleased that you have outlined four possible legislative amendments that you would like to see included. I'm wondering when you expect these tools to be brought forward to the Minister of Finance, or have you already been in consultation with the minister to bring forward these legislative amendments to better protect Ontario's investors?

Mr. David Wilson: The four areas that we cited in the paper that I think you're referring to, Ms. MacLeod, are on page 21. So let me answer your question on timing, because they aren't all in exactly the same state of evolution and preparedness for discussion with the minister.

The first one has to do with regulatory oversight of credit rating agencies; Jim Turner spoke about that. When do you think there will be something sufficiently developed to talk to the Ministry of Finance about in terms of legislation there, Jim?

Mr. Jim Turner: We are talking about putting that on a faster time frame, because I think it's less controversial. But I will say, part of the timing is looking around the world and seeing what's happening in this area. So while we want to move quickly, we don't want to move so quickly that we don't understand or can't reflect the thinking in Europe or Australia, for instance.

Ms. Lisa MacLeod: So you think in the next 12 months?

Mr. Jim Turner: Yes.

Ms. Lisa MacLeod: Okay. And what about the ability to preserve assets during an investigation?

Mr. David Wilson: The next two would be the next 12 months. I'm just looking at the bullet points on the bottom of page 21. "Preserve assets" and "broaden the definition of insider tipping" would be in the next 12 months for sure.

The last bullet on that page for possible legislative amendments is an adoption across Canada of a new policy that's been introduced in British Columbia having to do with the use of the US bulletin board for fraudulent purposes, mainly focused on naive retail investors. BC is bringing in this new policy, where a lot of this activity was originating. We're beginning to see evidence of some of the promoters of these types of schemes moving to other provinces, including Ontario. So that will be coming in the next 12 months as well.

Ms. Lisa MacLeod: So within the next year you're expecting legislation through this chamber that would greatly enhance investor protection in Ontario?

Mr. David Wilson: Yes. These are the four areas that we've identified so far that would enhance investor protection and the integrity of the markets.

Ms. Lisa MacLeod: Now, may I just move forward? With the passage of the federal budget—and I was actually there the day that Minister Flaherty read the budget to the House of Commons. They indicated that they would be moving forward with a national securities regulator. I just received a PIN from the parliamentary secretary to the Prime Minister to say that they are moving forward. When we met last, you had indicated that obviously they would be moving forward, but you didn't have a lot of details. Has that changed now with the passage of the federal budget?

Mr. David Wilson: There have been no details made public. The next event I believe that will be important in the development of a national regulator will be the announcement of a transition office, which is provided for in the federal budget, and the staffing of that office and the beginning of its operations. So I would expect that's the next development and announcement that you should anticipate in the evolution of that national regulator process.

Ms. Lisa MacLeod: Are you aware of a timeline?

Mr. David Wilson: No, I'm not.

Ms. Lisa MacLeod: So you're not. Okay. I have several questions here now.

The Chair (Mrs. Julia Munro): You have time for one more.

Ms. Lisa MacLeod: One more? I have to pick just one more? Okay. How about one that relates to this committee? There are three postings. I guess you're looking at candidates to come before this committee.

Mr. David Wilson: Yes.

Ms. Lisa MacLeod: When do you expect those three vacancies to come before this committee?

Mr. David Wilson: We're in the process of interviewing. We expect to go to the minister with recommendations some time around the end of this month, and then after that, it's up to the minister to decide which of our recommended nominees he brings forward to cabinet and to this committee. That's the month of May.

Ms. Lisa MacLeod: Okay. And then just finally, has your MOU been updated?

Mr. David Wilson: It hasn't been finalized or signed yet. It's pretty much agreed, as I think we said last time,

but it hasn't gone before the—I think it goes before a committee of government. I forget which one.

Ms. Lisa MacLeod: Okay.

Interjection: Management Board.

Mr. David Wilson: Management Board. That's the phrase I'm groping for, yes. Management Board hasn't reviewed it yet, is the answer.

Ms. Lisa MacLeod: Okay. Mr. Wilson, Mr. Ritchie and Mr. Turner, I appreciate you coming back here again. I wish you well, and thanks for answering our questions. I look forward to working with my colleagues on producing a very good report for the people of this province. Thanks.

Mr. David Wilson: Thank you.

The Chair (Mrs. Julia Munro): That concludes the opportunity we have this morning. We really appreciate that you're here again today. Certainly, as Ms. MacLeod has said, we've got lots to work with. So thank you very much.

This concludes the public part of our meeting, and I'd ask members to remain. We have a few minutes in which to make some recommendations that we want to move forward with.

The committee continued in closed session at 1004.

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Mardi 8 septembre 2009

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Agency review:

Ontario Municipal Board

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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 8 September 2009

Mardi 8 septembre 2009

The committee met at 0936 in room 151, following a closed session.

AGENCY REVIEW
ONTARIO MUNICIPAL BOARD

The Chair (Mrs. Julia Munro): Good morning and welcome to the agencies committee. We're pleased that you are able to join us here today. I would ask you to introduce yourselves for the sake of Hansard. You have up to 20 minutes to make an opening statement, and then we'll have questions from the caucus members.

Ms. Marie Hubbard: Thank you, Madam Chair. To my left is Stan Floras, who is counsel to the OMB, and on my right is Ali Arlani, who is the CEO. My name is Marie Hubbard. I joined the board in 1997 and have been chair since 2003.

We have submitted our response to the questionnaire, as requested by the committee, along with the background materials noted in our response. I would like to start with a brief overview of the board, its work, its challenges and its successes.

Ontario is growing and there is increasing demand for places for people to live and work. The OMB performs a critical function in providing a fair process to hear land use disputes. The board is one of the province's longest-standing adjudicative tribunals. Its creation dates back to 1906. The board is an independent adjudicative tribunal that conducts hearings and makes decisions on matters that have been appealed to the board under a variety of legislation. The OMB is referenced in over 80 statutes.

In a court-like setting, the presiding member hears from the parties and makes a decision based on the evidence presented and the relevant provincial laws and policy. The majority of the appeals are from the Planning Act, the Municipal Act and the Ontario Heritage Act, or are appeals by claimants filed under the Expropriations Act.

The objective of the board is to secure the just, most expeditious and most cost-effective determination of every appeal, taking into account the specific requirements and objectives of the enabling legislation and the rule of law. Board decisions are required to comply with provincial legislation and any provincial policy applicable for each appeal. The Planning Act requires that board decisions must "conform with" provincial plans such as the greenbelt plan or the Places to Grow plan and

be "consistent with" provincial policy statements. Consequently, the board is not merely adjudicating a private dispute between parties to the appeal, but is required to determine whether an application is consistent with provincial policy and is in the public interest.

Land use planning in Ontario involves several levels. A property owner may make an application to their municipality. The decision of the municipality may in some cases be appealed to the board. The decisions of the board may be appealed to the courts on a question of law.

The government of Ontario recognizes the importance of land use planning, has consulted on planning reforms, and in recent years has introduced a number of changes to legislation. The Planning and Conservation Land Statute Law Amendment Act came into effect on January 1, 2007. The City of Toronto Act, 2006, was proclaimed on January 1, 2007. As well, the first growth plan adopted under the Places to Grow Act, 2005, the growth plan for the greater Golden Horseshoe, was released on June 16, 2006.

The Ontario government is planning for growth in Ontario. The growth plan for the greater Golden Horseshoe forecasts growth of 3.7 million people by 2031. Growth affects housing, jobs, transportation, heritage, the environment and other areas.

When the board considers planning appeals, it is in the context of the provincial policies and legislative framework. Provincial policies call for intensification; however, often local property owners do not support changes to their neighbourhoods. Local politicians naturally may focus more on local concerns than on the provincial policies.

At times the board may be unfairly scapegoated as pro-development or undemocratic when the board is in fact exercising its mandate to independently adjudicate appeals within the provincial framework of laws and policies. Similar to the courts, the board does not enter into discussions with the media about decisions.

In some cases before the board, the municipality is divided between the position of the municipal planning staff and the local politicians. The board is required to give full weight to the planning evidence presented while at the same time having regard to a municipal decision.

Large projects may involve years of planning. Over time, municipal councils may change and their perspectives on the projects may change. In some appeals that come before the board, one elected council may have

supported a project and another elected council may be opposed to the project.

The board hears appeals in municipalities across the province. Each area may have its own perspectives and concerns. The board listens to the evidence presented, but must make its decision within the provincial framework. Each year we resolve between 1,200 and 1,300 cases. Each case may involve a number of appeals. We conduct over 1,700 hearing events per year.

In addition to adjudication, the board also strives to resolve cases through mediation. At the beginning of 2007, we hired a consultant to work with us on improving our mediation processes. We have created mediation facilities at 655 Bay Street and we have revised our rules of practice to reflect our current approach.

The board's mediation program has been successful. Where parties agree to mediation, in many instances a full settlement is reached, and lengthy and expensive hearings are avoided. The consultant interviewed our stakeholders and found a high level of satisfaction among participants and encouragement to offer more mediation. Even when a full settlement is not reached, mediation often helps to narrow the issues and streamline the process.

The board strives to provide clear and accurate information to the public. In September 2006, the board created a citizen liaison office. The citizen liaison office has been created to help the public participate effectively in the board's process by improving understanding of board policies and practice. The citizen liaison office has materials to assist the public. They have information sheets, a guide to the board and appeal forms.

In 2008, the board redesigned its website to simplify access to information, and at the same time ensured that all information was up to date. The site includes information about the board. Copies of all decisions issued since 2001 are available on the site, with the ability to search by keyword. As well, the status of all active cases before the board can be viewed through the e-status application, which provides current information from the board's case management system.

On an ongoing basis, the board seeks input and feedback from its stakeholders on broad policy matters, but not on specific cases. I meet regularly with representatives from municipalities, ministries and other stakeholder organizations. In addition, the board consults with stakeholders on changes to board rules and on any major changes to board practices.

The board has explored new ways of doing things, and technology has helped us with some new approaches. A new case management system was implemented in 2007. The board makes extensive use of technology for communication and for efficient processing of cases.

Through refinements of our processes and changes in technology, the board strives to resolve cases in a timely and efficient manner while providing fair and accessible hearings. In April 2008, we reduced the target timeline for hearings for minor variances from 150 to 120 days, and for all case types from 240 down to 180 days.

Generally, the board is scheduling hearings three months out, so that in effect administration has 90 days to process, acknowledge and schedule a hearing.

The board operates within the provincial financial guidelines and directives.

We have 26 full-time order-in-council appointees, including the chair, vice-chairs and members.

Following the proclamation of the Public Service of Ontario Act, the board developed conflict-of-interest rules that have been approved by the Conflict of Interest Commissioner. The rules are posted on his website, and are included in the briefing materials.

I hope this brief summary has provided you with an overview of the board.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin our questioning with the official opposition. Ms. MacLeod.

Ms. Lisa MacLeod: Thanks, Madam Chair. I'll be splitting my time this morning with my colleague from Newmarket-Aurora.

Welcome today to our committee. It's a pleasure for me to be able to learn a little bit more about the OMB and to have you here before us. I have a couple of quick questions that I think are probably best addressed to the CEO, Mr. Arlani.

We're wondering if it's possible for you to provide a copy of all the board expenses for all 26 order-in-council appointees for the last fiscal year and table that with the committee.

Mr. Ali Arlani: I don't have it here with me, but I'll look into it.

Ms. Lisa MacLeod: As follow-up, that would be great.

In addition to that, I'm just wondering if it's possible you could provide us with a list of external consultants for the mediation process and practices identified in your 2007-08 annual report, and if you could provide the total list of expenses for those consultants as well.

0950

Mr. Ali Arlani: I can provide that right now if you wish, or I can submit afterwards a copy—

Ms. Lisa MacLeod: Right. Could you circulate it to the committee? It's important that it's with the Chair.

Mr. Ali Arlani: I will do that.

Ms. Lisa MacLeod: Thank you very much. Now I have a couple of questions that are important to the community that I represent but also important, I think, overall to those who work with the OMB.

In April 2009, Minister Jim Watson, Minister of Municipal Affairs and Housing, said about the OMB: "Has the OMB been perfect? No. Can it improve? Yes, I think it can and I am quite prepared to work with the Attorney General to try and ensure that the OMB is more reflective of community values.... I've had a couple of discussions with the Attorney General going back a month and we both agree we are going to take a thorough look at the OMB and see how we can further improve it based on changes we made a couple of years ago. We want to see

if they've done what we hoped they'd do to bring greater balance to OMB decision-making."

It's interesting that you point out that you've often been the scapegoat, as unelected bureaucrats. Clearly, that's what the Minister of Municipal Affairs has suggested as well.

I'm wondering how you respond to that and if indeed the Minister of Municipal Affairs and Housing or the Attorney General himself has contacted you in this time frame from April 2009 to the present day to discuss what they would call a "greater balance to OMB decision-making" that is "more reflective of community values."

Ms. Marie Hubbard: I've had two sessions with the Deputy Minister of Municipal Affairs and Housing, Fareed Amin. I find him to be a highly intelligent, excellent communicator. He has done a great deal of work to communicate changes in the Planning Act and give me some ideas about what we might do better. It's been positive communication for me.

Further to that, we certainly have excellent communication with the Attorney General and his staff. I have met with the assistant deputy minister on occasion to outline my concerns and where we're going and what we're doing. In terms of communications, yes, I've had them with the deputy, not directly with the minister. We noted the minister's concerns.

I do believe that, notwithstanding, we do our best in a hearing to make good decisions based on the evidence. We make findings of fact and we write an analysis of that and write the order.

I don't know if that helps you, but—

Ms. Lisa MacLeod: Okay. I guess, specifically, the minister has suggested that there will be changes forthcoming to the OMB, if you look at this quote, and I'd be happy to provide it to you.

Ms. Marie Hubbard: I have not heard of changes, Ms. MacLeod.

Ms. Lisa MacLeod: Okay.

Ms. Marie Hubbard: We have Bill 51, that set out certain reforms, and the board has complied with Bill 51 in all actions that we do. I have not heard of anything—unless Mr. Arlani has something to add to that.

Ms. Lisa MacLeod: Okay. That's actually where I'd like to go next, with section 2.1 of the Planning Act. It states that the board "shall have regard to ... any decision that is made under this act by a municipal council or by an approval authority...."

The question that I have for you is, how does the OMB factor in the decisions made by municipal councils or by an approval authority?

Ms. Marie Hubbard: It's a very interesting question. We do have regard for municipal council decisions, but I would like to suggest to you, most respectfully, that municipal councils must adhere to their own policy framework, their official plans, and pay attention to that framework. If they deviate from the framework, then the matter is going to end up with us. For the most part, by and large, we uphold municipal councils quite often. I

don't have an actual figure but I can say to you that we consider very seriously.

I can give you an example, if it would be of assistance. I would like to take the Port Dalhousie case. They had a positive planning report, positive public works reports, and it's quite a comprehensive report. The council of the day approved the project. The council that came in under the election set out a motion, and the motion carried, that they did not support the project, but what was interesting is, they didn't rescind the planning documents that were in place. That's significant. If they really meant business, they could have rescinded the official plan amendment and the zoning bylaw that accompanied the approvals.

Ms. Lisa MacLeod: What weight do you give municipal councils' or approval authorities' decisions when you make an OMB decision?

Ms. Marie Hubbard: Well, let me say this: Our decisions are multifaceted and complex. We have an array of competing interests. A municipal council's position would be given as much weight as any other party to the appeal. It's based on evidence, and whatever evidence comes forward from municipal council is given full consideration.

Ms. Lisa MacLeod: I'd just like to move on a little bit here. This is an important question—it's actually from one of my colleagues. How does the OMB determine where hearings will be held across the province?

Ms. Marie Hubbard: Municipalities decide. The clerks of the municipalities contact our calendar room, talk to our senior case manager and they book hearing rooms. It may be a community centre in their town hall. On that note, one of the things I would like to see improved is accessibility to various municipalities for people with disabilities. There are still many municipalities that are not complying with the accessibility issue, and it's really quite serious. But we have no control over what municipalities do. The clerks of the municipalities do the bookings.

Ms. Lisa MacLeod: Just one quick question on the process, and then I have two very quick questions on advocacy. You mentioned that in 1906 the OMB began and that it's a fair process. I guess what I would ask is, to what extent do you feel that you meet the criteria of a tribunal? And a final question here, actually, from our legislative researcher, that I thought was probably very interesting to ask: You've recently had legislation that has changed the role of your mandate, and I'm just wondering if you could explain the specific ways in which the board's roles and responsibilities have been altered throughout that process.

Ms. Marie Hubbard: So the criteria is the number one question?

Ms. Lisa MacLeod: The number one question is, how do you feel you meet the tribunal criteria as you have evolved over the last 100-plus years? Furthermore, how do you think recent legislation has impacted your mandate?

Ms. Marie Hubbard: All right. First of all, the criteria for our board is fairly expansive, and we try to be

consistent in our decision-making. One of the things that is interesting is that each adjudicator has his or her own independence, but independence doesn't mean that you do as you please. There has to be some consistency across the board in how we handle cost, for instance, that kind of thing. So that's number one. Number two, we attempt to recruit people who have a skill set and knowledge of our work, so that when we deploy panels, they at least understand the Planning Act and the matter before them.

The other thing we have achieved in the last short while is that if we continue to manage—I've taken a bit of a diversion on the court-like system that we employ. What I'm trying to do is have some flexibility in the procedure and the process in order that unrepresented parties get some assistance. We're not telling them what to do, but we're relaxing the rules in the sense that we have a little ability to have some freedom for discussion and assist parties and participants. Also, during our pre-hearing conferences we try to narrow the issues, and we try to see if there's an opportunity for mediation across this particular appeal. If there's an opportunity for mediation, then we certainly deploy mediators to assist and see what we can do to resolve the matters.

1000

In terms of Bill 51 and its reforms of the board, we have no difficulty complying with that. I'll just defer to board counsel. We haven't had any issues that you are aware of that have come before us?

Mr. Stan Floras: No. The board recognizes that Bill 51 introduced a number of significant amendments to the Planning Act. The chair has referred to a number of the amendments that strengthened the role of provincial planning by requiring that board decisions be consistent with the provincial policy statement and provincial plans. You also referred to section 2.1 of the Planning Act, which requires a board to have regard to decisions of municipal council as well as the information and material before the council when they make the decision.

Ms. Lisa MacLeod: I understand there's an appeal by the city of Ottawa on section 2.1.

Mr. Stan Floras: There is a matter before the courts on that section and the obligation, yes.

Ms. Lisa MacLeod: I just want to wrap up by two quick questions and then I'm going to defer to my colleague, Frank Klees. I just want to know, have you seen Environmental Defence Canada as a party in appeal proceedings before the board, and if so, how often? What advocacy role do you feel the environmental groups have, and is it appropriate for an environmental group that is a charity to use both donated funds and public grants to fund legal challenges before the OMB?

Ms. Marie Hubbard: I don't think I can answer that question, to be fair. I haven't given it any consideration. I'm not even sure that there's intervenor funding for the environmental groups; I don't know, offhand. In terms of the environmental issues, I would like to respond just briefly and say that prior to a major appeal arriving at the board, there's a fundamental understanding by the pro-

ponent for any application to have some understanding that the development is feasible. So there are a lot of environmental studies and other matters that take place, just so that you know that, prior to the appeal getting to us, there is considerable work done in municipalities, counties and otherwise.

Ms. Lisa MacLeod: And I appreciate that. The reason is, Environmental Defence Canada has received provincial grants, and I think it occurs to some that the idea is to get the OMB to record a decision in their favour, which would help them be better positioned to raise monies. So that's why I asked the question, because the case has been made, and I'm just wondering if you felt that Environmental Defence Canada should be using their charitable funds to fight these battles at the OMB.

In any event, I'll leave my questioning now as long as it's possible to receive a list of the times that Environmental Defence Canada has appeared before committee.

Ms. Marie Hubbard: Yes, we can do that.

Ms. Lisa MacLeod: Thank you.

The Chair (Mrs. Julia Munro): Thank you. Mr. Klees, you have a couple of minutes.

Mr. Frank Klees: Just a couple of minutes? Do we have any more rounds coming after this?

The Chair (Mrs. Julia Munro): Yes.

Mr. Frank Klees: Thank you. I want to thank my colleague for the two minutes that I have, but I'll make it up on the other rounds.

Ms. Hubbard, I want to thank you, first of all, for your service to the province since 1997. To sit on this board is a challenge for anyone. I want to thank the board for the preparation that they've provided the committee in terms of the background work.

I'd like to, with my first question, refer to the issue of the scope of the work that the board does and the cost. I'd just ask this question: Has there been an analysis of the cost of the OMB process to the parties to these hearings? When I say "the parties," I refer, obviously, to municipalities, to proponents and to the Ontario taxpayer. I know that may be a tough question in one sense because you have so many different types of cases but I think we could certainly categorize them. I would be very interested, first of all, in whether there has been a cost analysis done, and if not, I would ask if in fact the board could undertake to do that so that we have good understanding not only of the work that you do but what the cost implications are to all of the parties, and then use that as a basis to see whether or not we can work on some very specific efficiencies. That analysis should include as well where the cost is being eaten up.

Your comments?

Ms. Marie Hubbard: I could go on for quite a while. The whole issue of costs concerns us, concerns the board greatly, but you've got to remember that it isn't the board that affects the cost to a municipality. It's up to them to make a determination and make sure that before they get to us, they've gone down every avenue to resolve the dispute. So often, if I may, we are accused of running up great costs, and we don't run up the costs. If the muni-

icipal council elects not to resolve things and they come to us, or if a municipal council elects to not listen to its own planning staff and its public works staff and the reports with respect to a given application, then they go outside and hire consultants at huge money and engineers at huge money, and on it goes and on it goes. This ups the tab to the municipal taxpayer.

I'm not sure—I wouldn't know how we would undertake that analysis. It would be a fun thing to do, however, because we certainly get many motions for costs and so on. I'd like to pursue that with a number of people and try to respond to you, but there are times—

Mr. Frank Klees: I would appreciate that. I think it would be more than a fun thing to do. I think it might turn out to be very un-fun, actually, and it may well build in some accountability to decision-making both at the municipal level as well as on the part of some stakeholders who appear before you on a regular basis. I'll pursue that in the next round of questioning, Chair.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on to Mr. Prue.

Mr. Michael Prue: I'm going to start with, I think, a very difficult question. Every other province in Canada has either no board at all, in the case of British Columbia and Quebec, or a municipal board with extremely narrow powers. We are the last one left with a large Ontario Municipal Board. Why is that?

Ms. Marie Hubbard: It's up to the Legislature to make a determination of what they want us to do. At the present time, we respond to the legislation. We operate under the umbrella of the government in power. It doesn't matter what government it is. We have many, many statutes. With great respect to you, I think that decision would have to come from someone other than me.

Mr. Michael Prue: Of course. I was hoping you would answer it exactly that way. I think we all need to hear that.

The question I have, though, is, has the OMB done any analysis on the other provinces and what effects or changes have occurred there as a result of either truncating the authority or abolishing the authority?

Ms. Marie Hubbard: Well, I wouldn't be about abolishing the OMB. There would have to be some considerable investigation at the legislative level before that happens. Let me tell you why. We're deeply concerned about jobs in Ontario. This board has before it tens of millions of dollars of economic investment—tens of millions of dollars. Sometimes those appeals come before us because municipal councils don't want to make a decision or they simply advise that they are not going to process an application.

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I think any legislator would have to give some thought to their action if they were to get rid of the board. I'm convinced over my years there at the board—and I've enjoyed every minute. I've worked hard to do my best there. But when I see some of the major projects, like setting down a huge tower in downtown Toronto or a plan of subdivision or something that takes place in the

agriculture areas—these are all serious investments, even by the average guy. Let's take the issue of a deck, Mr. Prue. If we think in terms of how he has to go to the Home Depot or somewhere else for the wood, somewhere for the nails, somewhere for the paint, there are a lot of factors that come into each and every application before us.

I think that there are areas that we could improve upon, but I cannot imagine Ontario without the OMB and I cannot imagine, if it were eliminated, what would occur in the courts.

Mr. Michael Prue: It has been proposed that the OMB—first of all, the OMB's been there since 1906. It was established because at that time, Ontario was primarily a rural municipality. Not many people lived in cities. Toronto even, in those days, was less than 100,000 people. The expertise all seemed to lie with the province. Put a little bit differently today, Ontario is a very urban scene: 80% of people live in towns and cities above 10,000 people. The majority of people live in big cities like Toronto, Ottawa, Hamilton or Mississauga; the list goes on. Some have argued that the municipalities now have the planning staff and the legal staff to make those decisions themselves. Obviously you don't agree.

Ms. Marie Hubbard: Oh, I do agree. But I want to point out to you—and you may not be pleased with my response—bigger doesn't mean better and that they can do everything that's appropriate in terms of an application. There are certain cities where each member of the council runs his or her own ward. They go outside to hire their own counsel, they go outside to hire a series of consultants to what I call, if you'll permit my words, mangle the words and the policies of the official plan and come before us. If we don't recognize that—that's what we deal with every single day. It's very important. In the large cities, sometimes their councils are too large. Rather than being elected at large, they have their own little bailiwick and they decide, "Well, I'm not going to listen to the legal counsel. I'm going to direct legal counsel to represent me and my ratepayers in a different way," outside of the official plan of their own municipality.

We're confronted with this on a daily basis. That is not to say that I don't respect that they have to represent their ratepayers. On the other hand, they're not going by way of policy sometimes or the majority decision of their own council.

Mr. Michael Prue: In your opening statement, you stated that the board must act in a manner and conform with provincial plans, such as the greenbelt plan or the Places to Grow plan, and "be 'consistent with' provincial policy statements." You go on in the next paragraph to state, "... an application is consistent with provincial policy and is in the public interest." Then when you were asked a question by Ms. MacLeod about municipalities—and I wrote it down as fast as I could—the statement was to the effect that the municipality is equal to any participant to appeal. It's really quite different. The provincial policies need to be obeyed; the municipal

policies or plans have to be equal to that of the developer or to the citizens or to Environmental Defence or anyone else who shows up.

Ms. Marie Hubbard: We listen to the evidence that they proffer and make findings of fact and come to a decision.

Mr. Michael Prue: I am one, as you can probably tell from my questioning, who thinks the municipality should have just a little bit more say than a developer or a group of neighbours upset about a planning subdivision.

Have you ever had discussions with provincial officials about giving the municipalities maybe not total control, but allowing their decisions—that the board would be consistent with an official plan of a municipality?

Ms. Marie Hubbard: Yes, we've had those discussions and we understand that. We certainly have had those discussions.

Mr. Michael Prue: Okay, but nothing has ever been forthcoming provincially to allow that?

Ms. Marie Hubbard: Well, I think that they don't want to interfere. They understand that we would give equal weight across all evidence and make a decision based on the evidence. I didn't see any reason for anyone to interfere in that.

Mr. Michael Prue: One of the so-called reforms that came out of this Legislature a few years ago was to allow the board to adjudicate upon claims which were called strategic lawsuits against public participation. SLAPP is what they're generally known as. How many times has the board heard these applications, and how many times have people been SLAPPED?

Ms. Marie Hubbard: It's a good question. I don't have those numbers with me, but we could generate some numbers on costs.

In terms of the SLAPP legislation, my view—no doubt about it—is that my minister would be monitoring SLAPP legislation. That's not something that I would comment on as chair of the board. I haven't had any communication with respect to any thoughts of writing some legislation in that respect.

Mr. Michael Prue: I have received, over the last number of years, as the municipal affairs critic for some periods of time—we have a small party and I haven't been the municipal affairs critic all of the time for the last eight years. But I have received letters from people from homeowners' associations, ratepayers' associations and environmental groups that are terrified of this legislation and how they are drawn into it. I think one of the biggest ones was the Big Bay development, where they were asked to pay in the millions of dollars for opposing it. Does the board feel—

Ms. Marie Hubbard: Well, no costs were awarded in that.

Mr. Michael Prue: No, I know that, but the threat was there and a lot of people get very afraid and back off. Does this allow for the cause of justice, with this hanging over it, that developers with lots of money and lawyers can make these applications? Whether they're successful

or not, the fear and the threat are very real to many groups.

Ms. Marie Hubbard: Well, let me answer you by saying this. I think that when parties, whatever group it may be, initiate an appeal, they must understand what they're getting into. In the case of Kimvar, there was a settlement, and yet that hearing was carried out, as you know, and the proponent, as I understand it, was put to the test in terms of bringing into play ecologists, marine construction specialists, engineers in hydrogeology, gulf management engineers. I mean, it went on and on and on, when they had a settlement. So the costs of that hearing were prohibitive, no doubt about it.

I guess my caution would be that when someone decides to appeal or take this matter to the board, they have to understand they've got to have a case and they have to present a case.

I don't know whether that answers you, but—

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Mr. Michael Prue: Well, it's quite clear that if anyone takes any matter to a quasi-judicial or judicial body, one has to be prepared to lose; one has to be prepared to pay in the event of loss.

Ms. Marie Hubbard: But let me tell you, Mr. Prue, they're not always. They think they can initiate the appeal, not bring the appropriate people forward to counter the specialists from the other side, and that's where the difficulties start to arise and where parties seek costs.

Mr. Michael Prue: I understand the parties, but is it within the balance of fairness, in your view, that large settlements can be sought against groups that seek to appeal, even if they've done a poor job? Does this not have a chilling effect on a quasi-judicial tribunal which has enormous powers—an absolutely chilling effect? In my view, I think it does, because a lot of these groups that once went to the OMB are now choosing not to do so, even though they may be opposed.

Ms. Marie Hubbard: I haven't seen a decline so far. I think that if there's going to be a change, it has to come in the legislation in terms of costs. We don't write the legislation; we take direction from the government. That's the state of affairs we find ourselves in. I wouldn't like to comment further to that because currently we have costs that come before us, and it's in our rules and so on.

Do you have anything to add to that?

Mr. Stan Floras: I would just add that "costs" awards are very rare. The board has made that clear: A proponent that's successful should not expect their costs. The board has written a number of decisions in that regard over the years that have stated over and over again that parties with legitimate points of view should be welcome to come to the board and present their case. A successful party, simply because they were successful in the end, should not expect a cost award. Costs are based on conduct, and the conduct has to be unreasonable. The board, through its Ontario Municipal Board Act, has broad discretion to award costs, but through its rules and practices has really limited that discretion for the members that are presiding at these hearings.

Mr. Michael Prue: I am even aware of some municipalities that have taken their own citizens or have threatened their own citizens with costs when the citizen disagrees with the municipal—are you aware of any of those being awarded? Because that, to me, is very chilling.

Ms. Marie Hubbard: I can't think of any at the moment.

Mr. Stan Floras: I cannot think of any, no.

Mr. Michael Prue: I do remember one letter—

The Chair (Mrs. Julia Munro): Thank you very much. We've exceeded—thank you. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Ms. Hubbard, for being here today, and thanks for the good work you folks do, although sometimes unpleasant, coming from a municipal background. I've seen some of the struggles that, as a municipal councillor and mayor, we've put you through sometimes, which is probably not fair, but it happens. I agree with some of your statements that you've made in the past. Madam Chair, my colleagues will be also asking some questions, so they'll have some questions as we move forward.

My question is based on what Mr. Prue finished off on. The decision-making, especially in the text of the filings to consider a decision made by council—I'm going to use the word "frivolous"; I shouldn't, but I will—whether to stall the project, whether it's a personal—whatever the case may be. Based on that context, can you—and I know this is in your briefing that you provided us with, which was very, very informative, in your opening comments this morning. Can you elaborate a little bit more on the decision-making piece and explain the different or equal weight that you use by law—for example, provincial policy statements, the planning documents that you might be provided with or the municipality might have—and are there good principles? Can you just expand on that a little bit to, I guess, give a sense from an appeal process to a decision-making process?

Ms. Marie Hubbard: First of all, I would like to say that municipal councils generally do a lot of research before the appeals arrive with us. Usually decisions are accompanied by planning reports, public works reports, environmental reports, all kinds of studies that may have been enacted because of the official plan process, and those studies sometimes are upgraded and circulated to the various agencies. Before the appeal gets to us, the various agencies sign off on those, and that helps the planning staff and the public works staff to craft their decisions once they sign off. So there are several phases before the appeal arrives at the board. Usually municipalities are represented by council and they bring their own experts. We listen and give full weight to what they have to say.

I don't know that that answers you. Do you have something to add to that, Stan?

Mr. Stan Floras: As the chair alluded to in her opening submissions, the board has a mediation process and parties can avail themselves of that. So, after that back-

ground work is done by the municipalities, if there's still a dispute and there's an appeal to the board and it's a valid appeal, then there's a pre-hearing process that's set in motion and there's a mediation that the parties can avail themselves of. Hopefully, there may be a possible resolution of the issue so it doesn't have to go to a full hearing.

Then you've heard in the submission as well the requirements of the board to have regard to the position of municipal council and carefully consider the position of municipal staff as well as consistency requirements in section 3 of the Planning Act.

Mr. Lou Rinaldi: So tell me, would there be an application coming before you, after you do your due diligence prior to setting up a board hearing and all the process, where you would see there something that you'll send back to the municipality for their reconsideration and suggest that maybe this is not going to go anywhere, or whatever the reason may be? Have there been times that that might have happened?

Ms. Marie Hubbard: On occasion, we do send matters back to a municipality. If there's new evidence, something new that arrives at the hearing that had not been before the municipal council, we refer it back to the municipal council for reconsideration—

Mr. Lou Rinaldi: So you would.

Ms. Marie Hubbard: —and no decision will issue, and we'll await what the municipal council decision is.

Mr. Lou Rinaldi: Great. Thank you. I think Ms. Mangat will have a question.

The Chair (Mrs. Julia Munro): Yes. Ms. Mangat?

Mrs. Amrit Mangat: Thank you, ma'am, for being here today and working very hard to protect the interests of the public.

My question is also with regard to the process. In your opening statement, you said that the OMB resolves "between 1,200 and 1,300 cases. Each case may involve a number of appeals."

Ms. Marie Hubbard: Yes.

Mrs. Amrit Mangat: Since the OMB is an arm's-length agency, can you please tell me if the minister of the crown plays any role and if he can overturn the decision of the OMB?

Ms. Marie Hubbard: Would you repeat the last portion of that for me? I'm quite old and I'm not hearing—

Mrs. Amrit Mangat: Since the OMB is an arm's-length agency from the provincial government, my question is if the minister of the crown can play any role in overturning a decision of the OMB.

Ms. Marie Hubbard: If the minister—

Mrs. Amrit Mangat: Yes, can play any role in overturning a decision of the OMB.

Ms. Marie Hubbard: My understanding is this. With respect to minister's zoning orders, I would refer you to section 47 of the Planning Act and the provincial policy statement, section 3.1. In 1982 or 1983, the power to the minister was deleted from the act, and it was reinstated in—is it in Bill 51? If there's a matter of provincial

interest, then the minister of course can initiate a minister's zoning order.

Mrs. Amrit Mangat: He can if it's in the interest of the province?

Ms. Marie Hubbard: It's a matter of provincial interest.

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Mrs. Amrit Mangat: Thank you. I'll ask my colleague to—

The Chair (Mrs. Julia Munro): Okay. Mr. Johnson.

Mr. Rick Johnson: Generally speaking, do you believe that the OMB has had sufficient regard to the decisions made by municipal councils, and how would this be demonstrated?

Ms. Marie Hubbard: It's interesting that you mention it. Yes, I do; I certainly do. There's case after case where that has happened. We've examined the matters before the city of Ottawa and the city of Toronto. I won't get into all the details, if I may, but I can say this: Out of 51 cases, 28 were resolved through mediation, pre-hearing conferences. The municipalities were upheld in a good number of those, or there were some modifications in the decision-making. But by and large, the municipalities were upheld.

Mr. Rick Johnson: Is the mediation process becoming more the norm?

Ms. Marie Hubbard: Not exactly. I don't have sufficient mediators who are fully trained, but I do have a team of mediators who are very effective. Mediation takes with it a high degree of ethics. Mediation takes with it consent of the parties—some parties may not want to mediate. In some instances, we have a decision where the municipality's upheld or the municipality comes to an agreement with the applicant but the ratepayers don't like the agreement, so we still have to hear the appeal.

But I do believe that we should be, and we are, streamlining our complex hearings—we have more complex hearings than we've had in the past. There's quite a difference—we're seeing the complexities, the multi-faceted hearings, where I think that mediation has an absolute role to help to resolve and lessen the impacts and the issues. I'm all for mediation. One of the things that I think we could improve on in the future is to have more mediators trained and put them out there to see what we could do. I think that would respond to Mr. Klees's question. I think that mediation would lessen the expense of the hearing to the municipalities and the parties, but as I say, mediating these issues, because there's multi levels of planning documents and it's complex, is not simple. But I have a handful of mediators.

Mr. Rick Johnson: Just as one more follow-up on that, in a mediation situation is it common that all parties would agree that the decision of the mediator would be final in that—

Ms. Marie Hubbard: No, it's not common. Very often you don't have consent, and if you don't have consent, you can't mediate. You can't mediate with people who don't want to mediate—it's that simple.

Mr. Rick Johnson: Thank you.

The Chair (Mrs. Julia Munro): Any further questions?

Mr. Michael A. Brown: Thank you, and welcome to Queen's Park.

I come to this with a bit of a background in rural northern Ontario. I represent a constituency of 86,000 square kilometres, and in a previous life which seems many years ago, I sat on something called the Manitoulin Planning Board, which is a joint planning board that a number of municipalities are involved in—and strangely or interestingly enough, there's a couple of unorganized or unincorporated townships there.

My question is that it seems to me that there is a relationship between the size of the communities and the development pressure as to how many representations are made to the Ontario Municipal Board for some kind of adjudication. Is there that correlation? Because I don't recall having many OMB challenges mounted in the constituency of Algoma-Manitoulin, although I'm aware that one recently was adjudicated. Is that the case, and could you explain to me—someone on the other side, one of my colleagues, said that there's a high degree of planning expertise in the municipalities—

Mr. Michael Prue: In big ones.

Mr. Michael A. Brown: In big ones—that's correct. I have only two municipalities that have more than 5,000 people, so their resources to hire the best municipal planning staff are rather limited. So what do you do to kind of accommodate that situation where the municipality does not have the resources to make their case in the way they might want to?

Ms. Marie Hubbard: There certainly is a correlation; let's be fair. We don't have many hearings in Pickle Lake and Wawa. We are starting to see a few in Temagami, which is interesting to me. But what we do see from a board's perspective is a degree of—Toronto, Ottawa—highly sophisticated official plans, highly sophisticated planning departments, public works departments and so on. The northern municipalities are not blessed with having sufficient funds to put in place the people that they may require. But there are some interesting cases that we're now starting to see in Cochrane, Sudbury, Sault Ste. Marie, all over the place, so that the north, in my view, if you'd permit me, is sort of waking up to the new reality that development is coming one way or another. It's not anywhere near what we handle in the GTA, for instance, or in Ottawa or in London, but there are certainly some challenging cases, from Fort Frances right through Pickle Lake, that we're starting to see. So there is a correlation—you're right. They don't have the sophistication. In some instances, they don't have official plan documents and they don't have comprehensive zoning bylaws. So there are some serious challenges to the people in the north. There's no question about it.

How much can we help them? Well, we can perhaps soften the process, make it less court-like, more user-friendly and assist that way, but we cannot say to the municipality, "This is what you should be doing. This is what you can write in your OP," and those kinds of

things. We're very cautious about butting in. That's not what we do. We don't butt in, but we do try to be assistive as much as we can.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on. Ms. MacLeod.

Ms. Lisa MacLeod: Mr. Klees will be taking this round of questioning. I did have one more request for a list to be tabled—two actually. You indicate in your questionnaire, on page 2, "The board follows the central agency directives and guidelines. Example: Management Board of Cabinet's travel, meal and hospitality expenses directives and the government appointees directive." Could you table with the committee at noon or this afternoon those two guidelines and directives?

Mr. Ali Arlani: Sure.

Ms. Lisa MacLeod: Thanks.

The Chair (Mrs. Julia Munro): Mr. Klees?

Mr. Frank Klees: Ms. Hubbard, I'd like to just continue where we left off in a discussion about costs to the various parties. I realize full well that it's not the board that's responsible for incurring those costs. You're reacting to requests, whether it be from a proponent or a municipality, but I don't want this request of mine to go away. I'm very serious about wanting something tabled with this committee.

Ms. Marie Hubbard: We will.

Mr. Frank Klees: Perhaps you could comment, in terms of having had some time to think about it, how you might go about it in terms of what I'm requesting. I want to be specific again here: depending on the category of the hearing, the estimated cost to the Ontario taxpayer which is incurred as a result of the board responding and facilitating the hearing, the cost to the municipal taxpayers as a result of the decision being taken to the board, the cost to the proponent of the development, and if there's anything else that we're missing here, if you could add to it. I just think that would be a very important piece of information for us to have.

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Ms. Marie Hubbard: You're not missing anything. All the points that you've set on the table just now are all realistic. I think an approach may be—and I have people wiser than I who know how to do all these analyses—

Mr. Frank Klees: You brought them both with you, obviously, but I'm not so sure that they're wiser than you. They'll pretend that they are—

Ms. Marie Hubbard: But I'll tell you: We could extrapolate from our computers the number of cases where cost motions in fact were brought for awards. We could look at those and then we could stream them in terms of complex hearings, length of hearings—that's significant. Sometimes the more complex hearings go on for some considerable time. I would have several thoughts along that line. We could respond to that; I think I'd find it quite interesting. The submissions of counsel across the board on costs could be extracted. We have all of those exhibits; we keep them; we know exactly. I think we could do something that would be quite interesting.

Mr. Frank Klees: Very helpful. Included in that, if you could also reference the number of times that a municipality has appealed and the decision has gone against the municipality. If you could also include in that summary the number of times that—how can I put this?—advocacy groups, and I'll use Environmental Defence as an example, have initiated an appeal, and the number of times decisions have gone against the appeal. What I'm trying to get at here is the whole issue of frivolous appeals, appeals that are costing a great deal of money along the way, and time. Is there not something along the way that can be done to head these things off or to identify them at an earlier stage so that we can do away, without compromising the objectiveness and access, with these frivolous appeals that, from what I understand, are costing us all a great deal of money?

Ms. Marie Hubbard: I want you to know, Mr. Klees, that I wake up every morning with that very matter on my mind. When I deploy panels to municipalities on the complex hearings, I am totally tuned in, on a day-to-day basis. I want you to know that as chair of the board, I take my work extremely seriously. I have a lot of concerns.

I did learn something in my chemistry class in grade 9: that oil and water are immiscible, and advocates and adjudicators don't mix. That's two different worlds. You can't put them together and make something work. A lot of costs are incurred on occasion that don't need to be. It's one of the things we grapple with on a constant basis. Sometimes I wish that I could speak out loud and say what I really think about matters, but I try to constrain myself on these issues. It's quite serious, and what you've pointed out here is quite right. It gives us a lot of concerns. I don't know how that could be effected, but we do our best, on a daily basis, to try to resolve issues at a pre-hearing conference level. We do our best to deploy mediators where we think they make take a specific issue and resolve it. But it is a constant, for any chair.

My executive vice-chair and I—S. W. Lee is the executive vice-chair. We work closely together. This is a perennial issue that we talk about. We have yet to resolve it entirely, but I think that we have made some inroads, over the last five years, to try to do something about it.

Mr. Frank Klees: One of the reasons I wanted to participate in this committee discussion is because this has been an issue top of mind for me for a number of years. I've always wrestled with this issue of, as an elected member, obviously advocating on behalf of my constituents, and so numerous times, when development applications come forward, of course, we have representation from the proponent, often, from stakeholders, and from municipalities. So there's the constant tug-of-war that takes place between, do we want something happening next door to us for whatever the reason? Do we want it in the municipality? And then there is the broader public interest.

You've set out very clearly what the responsibility of the board is in your presentation, and I thank you for it. I just wish we could get this information into the minds of

the public so that they can understand what the role of your board is. And that is not to respond to public pressure; it's to do the right thing consistent with provincial policy. I think, if there's something that we as legislators can do to make clearer that public policy so that there isn't all of that time wasted on the shoulder of the discussion, that we could more clearly focus the discussion so that the decisions can be made in a more concise and precise way, we would like to get some guidance from you with regard to what that might look like, because this is a perpetual issue.

With that, I'd like to get back to the very brief discussion we had about minister's zoning orders, and I think my colleague Ms. Mangat raised that. There was a time—I believe it was in 1983—when the ability to appeal an OMB decision to cabinet was withdrawn.

Ms. Marie Hubbard: That's correct.

Mr. Frank Klees: If I recall correctly, the rationale and the reason for that was that we did not want these decisions to be partisan or political, that we did not want a major issue all of a sudden to be made because someone had political strength. We wanted to ensure that all of these decisions were based on good, sound planning principles, that they were based on a legislative framework, and that the board could make that decision in its quasi-judicial responsibility.

Ms. Marie Hubbard: Yes.

Mr. Frank Klees: So the partisanship or the politics was taken out of planning decisions in Ontario, which is the way it should be, in my opinion, because then you have proponents who can come forward and make their application. If the application doesn't fit within the framework, they'll go away, and so they should. But if it fits, then they'll do what they need to do to comply. If someone opposes, then they also know what that framework is within which they can raise the objection. But there isn't an appeal to a higher power, and that's why I strongly disagree with my colleague Mr. Prue, who somehow thinks that because you are a municipality, you have a veto over planning principles and over jurisdiction, or that your view of that Planning Act somehow trumps the view of a developer or a proponent. I would think that in this province, once we have legislation, we all are considered equal under the law. You make your representation and then you make your decision.

So here's my question to you: With regard to the minister's zoning order, under what circumstances does that minister's zoning order come into play? How can it be triggered? What is it about an application that can in fact trigger a minister's stepping into the process?

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Ms. Marie Hubbard: My view—and the legislation is clear; I defer to my best friend here at my left—is that there has to be a provincial interest. I may be going out on a limb here, Mr. Klees, but ministers have to be very careful that they don't become the court of appeal. I have a lot of concerns with respect to that. I think the provincial policy statement is our guiding document, and we stick to it. We want to hear that evidence in the

hearings, and to my knowledge, in my five years and 10 months as chair I can only think of one minister's zoning order. Can you think of any others?

Mr. Stan Floras: Not off the top of my head.

Ms. Marie Hubbard: One in, I believe, the Oro-Medonte area, but I have not dealt with any other minister's zoning orders.

On the other hand, I just want to add that one of the things that we do here, one of the matters that we do here is that ratepayers are sometimes told, "The minister will invoke a minister's zoning order and wipe this whole appeal away. It's gone. The board can't do this; it's over with." That's not the case. That isn't how business is done.

Mr. Frank Klees: With regard to your comment—and it was also referenced in the backgrounder as a challenge for the board—that when there is a change of council and you have one municipal council approving a particular application, we have a municipal election and now we have a different set of municipal councillors, and all of a sudden they're opposed—we know why they got elected. They got elected because in the run-up to the election they were opposing the development that everybody didn't like, or at least that a lot of people didn't like. So now they're trying to deliver. This goes right back to the issue of political interference. I want you to comment, if you could, please, on this very issue in terms of when it's so crassly obvious that there is political interference in what should be a very objective process. How do you as a board deal now with that new set of circumstances, and what is it that you can do to head that off, to avoid another four years of hearings, and if you can't, what is it that you need to give you the authority to do that?

Ms. Marie Hubbard: Let me answer from a chair's perspective: We're tough as nails. If a newly elected council determines that the council previous has for whatever reason done the wrong thing with respect to an application, the one thing that is always significant to me is that they don't do anything to overturn the official plan amendment and the bylaws, which is straight-out politics. I think it's quite interesting. And we deal with that quite frequently. I think there should be some consideration in some piece of legislation whereby we stick to that position, because the new council coming in no doubt is lobbied by a series of ratepayers and others, so they get elected based on, "Oh yeah, we'll overturn that," but in actual fact, when they get there they often don't do it. So those policies and those decisions still stand, and we end up seeing very expensive hearings. We see good projects going by the wayside sometimes because they just run out of money to keep putting up with this ebb and flow of political interference. It's a very serious matter in my opinion. It's a very serious matter as it relates to investment in Ontario. Their own official plans must guide them. The provincial policy statement must guide them. I'm not a legislator and I'm not a lawyer, but there's no question in my mind that it would relieve the board a great deal if something emanated in legislation that would give some assistance in that regard. We've

seen this happen in St. Catharines, and that has been the worst—I've never seen anything like it. I read the press and I can barely believe what I'm reading.

At any rate, any help that the board can get through legislation we'd be very happy to see.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes the time we have. Mr. Prue?

Mr. Michael Prue: Surely. A couple of housekeeping questions. Just so I understand, how many people are presently hired in the adjudicative role at the OMB?

Ms. Marie Hubbard: Twenty-six.

Mr. Michael Prue: Twenty-six. And what kind of training have these people received?

Ms. Marie Hubbard: I'm glad you asked the question. Some people come to us with a very narrow skill set and we, during the last five years and 10 months, have initiated an extensive education program. We do education on a day-to-day basis. In our interaction we do teaching, we talk about the Planning Act, the provincial policy statement, the legislation that guides them. We assist them in many ways in terms of the process of the board hearing and we keep in touch with PIR and MMAH, who come and talk to us about the latest legislation. PIR has been exceptional in their communications with us, the deputy and his staff, in terms of teaching us about the demographics, about the settlement areas, about their general plans on Places to Grow. The MMAH is the same. The MMAH in the last while has given municipalities all of the tools they need to design healthy communities, to have urban design people decide how municipalities are going to configure a building or so on.

So we talk about that with our members. We have one session every month at a board meeting where we review case law. We elaborate on policies. We write a decision and elaborate on case law, like Places to Grow. That becomes our case law that we follow and we teach our members to read the cases. Then we've got the OMB reports that are reviewed by distinguished counsel. OMB reports report on a number of our decisions and they are published—are they out every month or two months? Every month we get those.

We encourage our members—on top of that I circulate decisions internally, where I think a member has grasped a particular piece of legislation, so that everybody knows, “We want to be consistent. Here is a good case. Just read this and understand it.”

I have a lot of dialogue—I'm very close to my members, very close to them. I know their strengths, their weaknesses, and we try to assist and build upon that. We have an extensive education program internally.

Mr. Michael Prue: Most quasi-judicial tribunals are not bound by their own precedents or their own jurisprudence.

Ms. Marie Hubbard: We're not either.

Mr. Michael Prue: No. Okay. I just wanted to make sure.

Ms. Marie Hubbard: We're not either. I thank you for raising that. I'm not trying to imply that, but certainly

we're doing the best we can to get consistency across the board. It's very important.

Mr. Michael Prue: From the 26, how many are legally trained?

Ms. Marie Hubbard: Are what?

Mr. Michael Prue: Legally trained lawyers.

Ms. Marie Hubbard: How many lawyers have I got, Ali? I can't remember. Give us one second and we'll tell you. A good number of them.

Mr. Michael Prue: A good number?

Ms. Marie Hubbard: A good number.

Mr. David Ramsay: Is that a good thing?

Mr. Michael Prue: That was my next question. Oftentimes we find that these boards are stacked with people from the legal profession and I just wonder, in this particular board, how many.

Ms. Marie Hubbard: I think about 10—10 or 12.

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Mr. Ali Arlani: Less than half.

Mr. Michael Prue: About half?

Ms. Marie Hubbard: Less than half are lawyers.

Mr. Michael Prue: Less than half. Okay, then my next question: Is this too many?

Ms. Marie Hubbard: Too many lawyers?

Mr. Michael Prue: Yes. We often have that question asked, that ordinary people, business people, heritage people, community people, former councillors and mayors would maybe make a better fit.

Ms. Marie Hubbard: Well, I have to say that—

Mr. Michael Prue: Or you just don't have any say, because the Legislature sends them.

Ms. Marie Hubbard: We really like lawyers, but we like other folks as well. Do you understand me?

At any rate, some of the people with municipal backgrounds, and I'm one of them—I accessed public office. In my earlier life, I was a nurse. What interested me in planning was that I wanted to see how decisions are made in how we house people. In those days, affordable housing was just coming on the horizon, and I was a director of affordable housing. I decided to run for public office and I accessed and chaired planning for eight municipalities, for a large region. I thoroughly enjoyed myself.

I see people today who—the people in municipal life, they get it. They understand the process of municipalities. Not all lawyers do, but that's not to depreciate them. Lawyers bring a special background to the process. They understand the law. But sometimes you have to be a little more flexible. So the people on our board who have had municipal experience have done very well, in my opinion.

Mr. Michael Prue: The reason I'm asking that question is that the Legislature has called upon this committee from time to time to appoint new people. Should the review process look outside the legal confines more than we've done in the past?

Ms. Marie Hubbard: Well, I find that it's an interesting thing, in the recruitment phase, to talk to people and see what they bring to the particular—you know,

what skill set they've got. I've been remarkably surprised that people with no legal background sometimes do very well at the board. They really do.

I would look at a broad spectrum, if you were about to approve people. A broad spectrum of members is very important, in my mind.

Mr. Michael Prue: We have received a number of letters in advance of today's hearings, and we will have some deputants later this afternoon. The letters that have been most critical of the board come from groups that identify with the heritage aspect. There are a number of them. I've got a whole bunch of them here. They cite cases that they are unhappy with, and I know some of them you've already talked about. The ones most often cited are the Lake Superior—

Ms. Marie Hubbard: Michipicoten?

Mr. Michael Prue: Yes. I'm trying to get the right word here. Is it a gravel pit or something?

Interjection.

Ms. Marie Hubbard: Well, it's more than that. There's a—

Mr. Michael Prue: Okay, it's more than that. Grimsby, Alma College, the Bronte triangle, Port Dalhousie: Those are the ones that come up over and over again. Is there enough expertise on the board at this time dealing with heritage matters?

Ms. Marie Hubbard: There is. And the Conservation Review Board is an interesting board all by itself. It's another group of advocates.

We have on our board Marc Denhez, who is known across Canada and the United States. He's a heritage buff. He knows the business; he knows the act.

Our members understand heritage. They do. We have a good team of people who are quite capable of going out and looking after heritage conservation areas. We get it. The provincial policy statements require that we do that. We of course have the jurisdiction to deal with demolitions. Any alteration would go to the Conservation Review Board.

But once again, I think a good deal of the conflict, if you will, or the upset of these groups is unfounded—absolutely unfounded.

Mr. Michael Prue: We have a letter here as well, dated August 20, 2009, from George Carlson, councillor of ward 11, city of Mississauga. It is his opinion that to properly address matters related to cultural heritage conservation, the OMB have within its membership at least one member who has an area of expertise related to cultural heritage conservation and that the member must confer with the review board before making a decision. Would that—

Ms. Marie Hubbard: Why would we have to go outside to another tribunal to confer? They didn't hear the evidence. I think that is not appropriate and I don't support that comment at all.

Mr. Michael Prue: He also goes on to say in his letter that this is a very cumbersome process because oftentimes—and he quotes, "The Ontario Heritage Act, section 25.1, states, 'Despite section 5 of the Ontario

Municipal Board Act, the board may appoint a member of the review board to sit on a panel of the board conducting an appeal under this act for the duration of the appeal.'" Then he writes, "This would appear to be acceptable in theory, but in practice it is not proven to work." His reason, which he cites, is that most of the people on the review board are not full time and cannot attend long hearings.

Ms. Marie Hubbard: The Conservation Review Board is a part-time board. The Conservation Review Board are advocates; they're not adjudicators. My experience in assigning them to a hearing at the OMB—it becomes very complex. Alma College is one of the examples where we put a Conservation Review Board member sitting with an OMB member, and there were a series of rather unpleasant events that occurred there. As far as I'm concerned, I will be very discreet and careful during my chairmanship, which will end soon—and I'm sure some people will be happy to see the end of me at the CRB—but at any rate, I'm very careful about what I do in terms of assigning a Conservation Review Board member.

Mr. Michael Prue: How much time do I have left?

The Chair (Mrs. Julia Munro): About three minutes.

Mr. Michael Prue: About three. I'd better not get into too many other major areas, but we've also received a letter here from a group called FoNTRA. This is the Federation of North Toronto Residents' Associations. They go on in great detail, and perhaps if you could comment on some of the suggestions they are making, just so I have an understanding of whether their suggestions are totally in keeping with what you think.

The first planning reform recommendation: They believe that the Ontario Municipal Board currently functions solely as an appellate body and that it should not be conducting de novo hearings with respect to Toronto planning matters. They think that it should be an appellate body that hears on the basis of the information that's already been prepared. Any comment on the holding of de novo hearings, whether or not this is—it's a strange appeal board that goes completely de novo. I mean, it is; it's a very strange phenomenon. Why is it that it's happened here in the OMB, and should it continue?

Ms. Marie Hubbard: You answer that, and then I'll come in, okay?

Mr. Stan Floras: Bill 51 did change the board's mandate to be that of more of an appeal board as opposed to a de novo hearing by restricting the right of certain people to bring appeals. As well, they restricted the type of evidence that can be presented at a board hearing to that that was considered by a municipal council. If not, as the chair alluded to in an earlier answer, the board will give the opportunity to the municipality to consider the new evidence that was considered before making any decision.

In response to that question, I think this group should carefully review some of the provisions in Bill 51 to see how the province has responded to that concern. The board's mandate has changed considerably through these amendments.

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Mr. Michael Prue: You said you wanted to comment as well?

Ms. Marie Hubbard: No, I think he's covered that.

Mr. Michael Prue: Okay. I know my colleagues from the Conservative Party may not agree with this, but they are recommending assistive intervenor funding for residents' associations so that they can appear on an equal financial footing with developers. This was done away with by the Harris government about 10 years ago or so now. That intervenor funding which did exist was taken away. Would intervenor funding harm in any way the workings of the Ontario Municipal Board if groups were given monies?

Ms. Marie Hubbard: No. It doesn't affect us. If somebody had intervenor funding, that has nothing—

Mr. Michael Prue: I mean if they were given monies they would then, I assume, hire legal experts, planning experts and people who could assist the process as opposed to opposing it.

Ms. Marie Hubbard: Yes. It has nothing to do with us, how they're funded. That isn't someplace where we would go.

Mr. Michael Prue: With the taking away of the intervenor funding, it didn't hurt the board at all, it didn't help the board at all; it had no effect?

Ms. Marie Hubbard: I don't think I can comment on that.

The Chair (Mrs. Julia Munro): I'm sorry, we must move on.

Mr. Michael Prue: Okay. If you think about it, I'll ask it in the next round, if I can.

Ms. Marie Hubbard: Yes. Let me think about it, please.

The Chair (Mrs. Julia Munro): Mr. Rinaldi.

Mr. Lou Rinaldi: I'm just going to refer to a written submission from the Ontario Professional Planners Institute that was addressed to the Chair for this committee, and we all have a copy. As we know, "The OPPI is the recognized voice of the province's planning profession." Their scope is very wide, with members from government, private practice, universities and non-profit agencies to look after field work for urban and rural development. They make a comment in their submission and I'd just like you maybe to expand on that, on how we achieve that. I'll just quote here:

"OPPI commends the OMB's public outreach initiatives as it demonstrates that the board continues to be mindful of the role of the public and community at large and their right to have access to, an understanding of and the ability to fully participate in the hearing process."

Can you elaborate on that, please? How do we make sure that various groups have access to OMB hearings in a fair—

Ms. Marie Hubbard: They have full access. There's no impediment. If they arrive at a hearing and decide that they want to present a paper or make a position, there is no impediment. They are fully recognized by the panels

and they have their day in court, so to speak. There's no problem.

Mr. Lou Rinaldi: No impediment. Just to follow up on that, though, you made a comment before, and I think it was referring to my colleague Mr. Brown from the north. I know that it referred to the municipal portion of it where they don't have the professional staff. In many cases, groups might not have professionally advanced support. Would you have some kind of leniency to make sure that they came across and that they got their thoughts across to the board?

Ms. Marie Hubbard: Yes. We ask them for witness statements and to articulate their concerns. We have patience with that. We assist, and sometimes they do get assistance from other parties to the proceedings. We try to narrow the issues with them and make sure they understand what those issues are.

Mr. Lou Rinaldi: I guess the point I'm trying to make is that they understand that they do a good job of that. I just want to make sure that that was filtered with that. So thank you.

The Chair (Mrs. Julia Munro): Ms. Hubbard, could I ask you just to make sure you're speaking into the microphone?

Ms. Marie Hubbard: I apologize.

The Chair (Mrs. Julia Munro): It's just harder for other people.

Ms. Marie Hubbard: I will do that.

The Chair (Mrs. Julia Munro): Thank you.

Mr. Ramsay?

Mr. David Ramsay: Marie, welcome to the committee. Like my Conservative colleague, I want to thank you very much for the work you've done on behalf of the province of Ontario over these years. When you said how you've served as chair for five years and 10 months, that means to me that this time is coming to an end, I take it?

Ms. Marie Hubbard: It is.

Mr. David Ramsay: So I don't know what's going to happen in your future, but again I want to thank you very much for what you've done.

I had to be absent for a little bit, so I apologize to all my colleagues and yourself if I might be a bit redundant, but we've all touched upon this a little bit, about really what your role is as a board here. I think there is a lot of misunderstanding when you go against what has been seen as a municipal council decision: "How can you do that? You're not listening to the local people." I think the idea from way back in the early 1900s of the OMB was to have this consistency that you talk about for planning, that you don't just move to the flavour of the day or the week in development planning but that there are consistent rules.

I think people also have to appreciate that the municipalities are creatures of the province, and as we've given more and more power over the years to municipalities, and rightfully so, it is the province that has supreme control of how the province develops. We certainly work with our municipal partners to do that on the micro level, but as we've all said around here, they have

to be consistent with the policies of the province. I don't know if maybe we need to do a better job in educating people as to what's going on here, and that when the public works people or the planning people in the municipality bring up their recommendations, they and their great professional work are being consistent with what they understand is the provincial law and, obviously, the official plans and the zoning bylaws of that municipality. But then, of course, a council, because of maybe the flavour of that day, just wants to have no regard for that, and they just can't do that. I think that's the problem there, and I guess maybe all of us need to educate—and that's probably more the government's role—as to what your role is and what you're trying to do, that you're trying to make sure decisions are consistent with the law.

Ms. Marie Hubbard: Yes, that's exactly what we do.

Mr. David Ramsay: I have a question before I pass it on. I don't know if you are in a position, with two more months to go, but you have a lot of experience and you would have great advice for us as a government. I don't know if you're in a position to do that right now, but if we were to do one thing to make the board even better or to make the whole system better, what would it be? What would you advise us to do to improve the development of this province?

Ms. Marie Hubbard: One thing that could be done is that PIR put out the growth plan—let's use this example—and municipalities were to incorporate in their official plans by June of this year the various policies of the growth plan. Many municipalities have not done that, and there needs to be a follow-through by MMAH to make sure that the official plans of the various municipalities are brought up to date and that the tools that MMAH has given them with respect to site plan approvals, with respect to designing their communities, with respect to urban design, and with respect to site plan are initiated in their official plan policies. We can't go into a municipality and say, "Look, you haven't included these demographics. You haven't included in your official plan that certain studies need to be undertaken. You have no urban design situations. Where are you coming from here?" Believe it or not, we have no authority or jurisdiction to walk into a hearing and make statements like that, but very often we note that the directions given by the various ministries in terms of the growth plan and other documents are not adhered to in a given and respectable amount of time. So what would be helpful is if there is some means of follow-up from the various ministries—MMAH and certainly PIR—on what their expectations are, and see that they're fulfilled. That would make a big change for the municipalities as well and the quality of the evidence that they would bring forward. That's one thing, and it's not small. It doesn't sound like much, but it is. I believe that extensions were given to municipalities—am I right on this, Ali?—

Mr. Ali Arlani: Yes.

Ms. Marie Hubbard: —to include in their documents the directions from the growth plan. So that would be one thing I would like to see followed up on by the ministries.

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Mr. David Ramsay: Might this be a lack of marshalling of resources at the local level, or lack of expertise, to bring—

Ms. Marie Hubbard: Well, I can tell you, without mentioning any names, there are certain municipalities that don't agree with the demographics in the growth plan. They don't agree with the employment numbers, those kinds of things. Sometimes the board gets caught in the middle. They haven't considered or come upon some numbers, so to speak, that they want to incorporate, so they just let it go. They're not in agreement with a particular piece of legislation and that becomes a problem for us.

I think that would be one area that would help a lot. It would help the municipalities themselves when they come before us with an appeal, or someone else appeals their decisions.

Mr. David Ramsay: Yes, it makes sense. They'd be in compliance.

Ms. Marie Hubbard: Yes.

Mr. David Ramsay: Again, thank you very much and good luck with your future endeavours.

Ms. Marie Hubbard: Well, I'm now 74, so it's time for me to move on, and I would think in the next three or four weeks I'll be doing that.

Mr. David Ramsay: Well, good luck to you. Thank you.

The Chair (Mrs. Julia Munro): Mrs. Mangat?

Mrs. Amrit Mangat: Thank you, Madam Chair.

The Ontario government is planning for growth in Ontario, and the growth plan for the greater Golden Horseshoe forecasts growth of 3.7 million people by 2031 in this area.

Ms. Marie Hubbard: Yes.

Mrs. Amrit Mangat: As you know, that growth affects jobs, housing, transportation, heritage, environment and other areas. Are there ways in which the OMB could enhance the participation of citizens and community groups in the hearing process? This is my question.

Ms. Marie Hubbard: Just give me a minute. I want to think.

Mrs. Amrit Mangat: Sure, take your time.

Ms. Marie Hubbard: Because that's a loaded question and I want to be careful that I don't get into difficulties with it.

The Planning Act allows for a lot of public participation, so there's a lot of opportunity for people to come forward and give their views on their community and so on.

I was going to mention the intensification. Should that come in here or not? I don't know.

Mr. Stan Floras: It's part of our answer, I suppose.

Ms. Marie Hubbard: Yes, it's part. I want to get going on intensification issues because that is central to the legislation now. We're trying to do something with respect to smart growth and efficient use of land, efficient use of transit, pipes, you name it—infrastructure.

Of course, not everybody can own a house, so to speak. We're creating these huge communities by way of

condominiums and I'm finding some very interesting things coming out of that. The condominium then becomes the neighbourhood. The condominium and how it's situated—we have to consider parks. We've got to have a bit of green space. We have to think in terms of how people live: Where do they go for a quart of milk? These are significant issues. A lot more work needs to be done on how we incorporate a sense of neighbourhood into these very high towers, but also how we incorporate in this intensification an opportunity for all levels of income and people to congregate together. It's an issue that now is starting to emerge and we're saying the affordable housing projects are getting marginalized over here, because people want to argue with us over affordable housing.

We mustn't lose sight of what we're doing when we get into the intensification issue and we have to make that community as environmentally friendly as possible. The tools are available to do that, and municipalities have to be smarter in how they do it.

I don't know if that answers your question.

Mrs. Amrit Mangat: In what way has the new citizen liaison office helped in this process?

Ms. Marie Hubbard: Oh, it's been an amazing experience. It certainly helps me as chair, because my phone rings less. The citizen liaison officer is a planner, so he understands the process; he understands the appeal process as well. It's taken a lot of time for him to set standards of communication and that sort of thing, but it's an amazing post and we're most happy that we have it.

Mrs. Amrit Mangat: And what impact does the updated website have?

Ms. Marie Hubbard: A huge impact. At the moment, we're redesigning our website. We need to embellish it somewhat, and we have ideas. We have a communications expert, who is sitting behind me somewhere, in the name of Joe Whitehead, and he's done a very good job with all of the IT work. It means a lot to the board. It's one of the things that I'm very happy about, one of the matters I'm happy about.

Mrs. Amrit Mangat: Do you think that these reforms result in a more effective, transparent, accountable and user-friendly OMB in 2009?

Ms. Marie Hubbard: Absolutely. We're much more transparent than we ever were before. And on top of that, I've opened, let me say, the bridge to the moat in terms of opening up the board. The board in the past has not communicated with outside people. I now talk to stakeholders on an annual basis, not about the merits of a hearing, but rather about our role in terms of relating to professional planners and their moves to have healthy communities and designs of subdivisions, all of these kinds of things. I meet with the Ontario Bar Association on an annual basis, and they've been extremely helpful in helping the board and teaching the board and assisting us in so many ways.

The other thing is that I've had nothing but positive communication in terms of meeting with deputy

ministers and having them come and tell us what they need to tell us about any current legislation that they're thinking of drafting or speaking to us about a bill that they've tabled and had approved.

So we're rethinking our role. It's not the sort of blinders-on kind of board any more.

Mrs. Amrit Mangat: It's an ongoing process.

Ms. Marie Hubbard: Yes, it's an ongoing process.

Mrs. Amrit Mangat: Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. This will be the final round. Mr. Klees?

Mr. Frank Klees: Thank you, Chair.

You're holding up very well.

Ms. Marie Hubbard: I've got my water, so I'm fine.

Mr. Frank Klees: For a while there I thought Mr. Ramsay was making a pre-emptive announcement about your retirement, when he said that you wouldn't be with us much longer. But then I hear from you that it apparently is not a forced retirement, that you intend on moving on.

Ms. Marie Hubbard: I don't know what day this is going to happen yet, but it's time for me to go into the sunset. I've had a marvellous opportunity at the board. It's been very exciting, and I hope that I've left it a better place, Mr. Klees. I understand the work of the board. We've made many changes, and it's been a marvellous time and a marvellous experience for me.

Mr. Frank Klees: You've served us well.

Ms. Marie Hubbard: I've done my best.

Mr. Frank Klees: I just hope that you will at least stay around and provide some input into that report that I've requested.

Ms. Marie Hubbard: I'll work on it right away.

Mr. Frank Klees: Okay.

Ms. Marie Hubbard: We'll get the basis of that as soon as I go back.

Mr. Frank Klees: I would just like to take a couple of minutes, on that note, to talk about the qualification requirements for appointees to the board. I know Mr. Prue touched on it briefly. But particularly given many of the changes now that the government has brought forward—and there was a time when the board was required to limit its decisions to the framework of legislation; now, with legislation such as the Green Energy Act and others, you really are mandated to think beyond that Planning Act as well and take into consideration all of these other pieces of legislation. So these hearings become more and more complex.

I'd like your thoughts in terms of perhaps what set of qualifications the government should be considering when making appointments in terms of experience with the law, with planning, engineering, various disciplines that have to do with these very complex issues, and if not specifically within individual appointees, do you feel that at least on a panel there should be certain qualifications represented by the adjudicators?

Ms. Marie Hubbard: Yes, I do. If I may start out with some very serious fundamentals: One needs to know how to read and write. I know that you would be amused at

that, but sometimes we meet up with people who can't write, and the decision is the hearing. The second thing is that our hearings are conducted all over Ontario, so they have to drive a car. Don't send me somebody who can't drive a car.

The skill set, in my mind, involves a number of things: Can they read comprehensively? Can they listen to evidence comprehensively and make findings? I believe that lawyers serve us well on the boards in the complex hearings; I'm all about having some lawyers, without question. I'm also all about having people with municipal backgrounds. But I'm not talking about a one-termer; I'm talking about people who have accessed the necessary planning committees and so on and have an understanding of what it is we deal with, because the planning instruments are very complex and these are not simple matters. If I leave nothing else with you today, it's that.

Now, the whole issue of recruitment is not totally simple, but we do our best. I have been asked to submit documents on the skill sets that I would require. So I would implore the standing committee to do an in-depth interview whenever they have a candidate for the OMB before them, because it's very serious business. There's a lot of money involved in these hearings, both for municipalities and participants. I'm of the view that sometimes a cross-section of people is very good.

I'll give you one caution, and some people will not be pleased that I'm going to say this: One has to be very careful about putting on the board commissioners of planning from various municipalities, because they cannot receive evidence and filter it and distill it and come up with—you know, that can be a difficulty because they're still the planners; they still want to plan, and that's not what they are there to do. So I would suggest to the committee and to Madam Chair, with respect, that when those candidates come before you, they're the people you should give second thoughts to.

We need engineers on the board as well. We've had engineers from time to time and they do very well in terms of the aggregate hearings; they understand the hydrogeology and that sort of thing, and the water table and all of the complex matters that arise from that. But I would implore you for the future, Madam Chair, that anyone who comes here is closely scrutinized. I do like to see a good cross-section of people; I wouldn't want to see all lawyers on the board. I think we could mix and match panels that do the complex hearings and they could do them well. So your point's well taken, and much rests with this committee to examine who's going to be appointed. I think it's very important.

Mr. Frank Klees: Thank you for that very practical advice. I would ask, if you have the time before you leave, that perhaps if a document such as this is not already available, your staff prepare, in consultation with you, an interview outline and a qualifications outline—

Ms. Marie Hubbard: Yes, we have that. I don't have it with me, but I—

Mr. Frank Klees: If that could be presented to the committee.

Ms. Marie Hubbard: Yes.

Mr. Frank Klees: It's interesting, though. If that's available, why in the initial recruiting process that the government is responsible for—because before an applicant comes here, they have already been recommended by the minister to be a member. Any advice that you might have in terms of how that document perhaps should be used much more practically at the outset when members are being recruited for proposal to this committee, so that we're not embarrassing people when they come before the committee, that someone has already done that screening—and particularly, as you say, with the multi millions and billions of dollars that are at stake in terms of the work that's being done by members of the board, that we be much more prudent in terms of who we bring onto that important appointment.

Ms. Marie Hubbard: There's no question about it. Some of the grief—listen, we're not perfect. There are some members who are challenged, there's no question in my mind. But we make the best of that by pairing them up with other people. We do the best we can, but I think that this committee should seriously scrutinize any recommendation that comes before it and make sure that the skill set is there and that before you put somebody on the OMB, it's got to be a high-level interrogation. That's what I've attempted to do, and I've stuck by that.

You also have to remember that there are not a lot of people that make applications to the board, believe it or not. It is not that easy to just pluck out several applications and find people right away. And we don't have a lot of openings from time to time; we just have one or two at a time. I don't know how involved this committee is, of course, but it is essential that recruitment is well done. I think it's important that this committee understands it.

Mr. Frank Klees: Thank you.

Madam Chair, how much time do I have?

The Chair (Mrs. Julia Munro): You have a minute. We're running short. We're down on the third round here.

Mr. Frank Klees: In that case, I'll rest my case. Thank you again very much.

The Chair (Mrs. Julia Munro): Mr. Prue.

Mr. Michael Prue: To go back, I know you've been answering questions and probably haven't had a big chance, but I thought I'd ask: Since the assistive or intervenor funding was abolished 10 or more years ago, has this improved or not improved the service? Any chance to think about it? You've probably been occupied.

Ms. Marie Hubbard: I've had a chance to think about it, and I don't think—I'm not trying to dodge your question, because I don't dodge anything usually, but as chair of the board I don't think it's up to me to get into some discussion on intervenor funding; I really don't. I have to leave it to wiser folks like yourself.

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Mr. Michael Prue: All right. In Mr. Klees' questions, you talked about how some of the members are challenged. Often—and I have worked with many organizations over my life, and I'm sure this one is no differ-

ent—people who come on board simply aren't up to the task; they're challenged. Should there be a mechanism designed by the Legislature that would allow a report from you, as the chair, or some other person to say that maybe this person ought not to be here and a new recruit should be taken on board?

Ms. Marie Hubbard: Yes.

Mr. Michael Prue: So that's something we could look at and we should look at.

Ms. Marie Hubbard: Yes.

Mr. Michael Prue: Because obviously, having someone who's not up to snuff on the job is not going to, in the long term, help the board, its members or the process. Okay.

A couple of other questions that have been raised by other groups—just if you could comment on them, because they've sent them in. Again, going back to the Federation of North Toronto Residents' Associations, they have suggested a couple of strategies, one of which is that official plans should be required to provide population densities and land-use intensities in order to offer intelligent guidance for site-specific rezonings to the board and, I guess, to councils as well. Do you think that those would be of assistance?

Ms. Marie Hubbard: They already do it, Mr. Prue.

Mr. Michael Prue: Okay. I'm just reading what they wrote.

Ms. Marie Hubbard: That's just a clear misunderstanding. It's already there.

Mr. Michael Prue: They also are suggesting the site-specific amendments to the official plan by individuals and developers should be eliminated in order to maintain the validity of public policy in between the mandatory comprehensive official plan updates every five years.

Ms. Marie Hubbard: No, I don't agree.

Mr. Michael Prue: You don't agree with that.

Ms. Marie Hubbard: It's ridiculous—no. Different applications come, different designs. Not at all. I don't see that.

Mr. Michael Prue: I just wanted to float it, because this is what's being suggested to us. I need to give you equal time.

Ms. Marie Hubbard: No, no, I understand.

Mr. Michael Prue: Some other questions: How will the board address future planning challenges and, again, intensification and demographic shifts? Is there something that the Legislature can do to assist the board in looking at this? Because obviously we know there is some depopulation taking place in northern Ontario and rural Ontario. We also know the explosive growth around the GTA and many places in urban Ontario.

Ms. Marie Hubbard: Right. Let me answer you this way: I am satisfied as the chair that I've been properly informed by the deputy of municipal affairs and housing and by the deputy of PIR. Both of those people have kept us on top of the legislation, kept us on top of their policies—can we say that? Is there something else you want to add there?

Listen, it's like going to university every day. These chaps teach us everything, and I have to run, run, run to keep up with them. It's been an amazing experience. I've learned a great deal and I'm quite satisfied that they communicate with the board in a very excellent way.

Mr. Michael Prue: You did make a statement earlier, and I hope I caught it right, about the mediation program, that some of the staff in the mediation program have not received enough training or adequate training or—

Ms. Marie Hubbard: No. No staff mediate; only the adjudicators mediate. To train mediators is quite an expensive undertaking. To the extent that our budget permits that, we train them, but I have, really, five mediators out of 26. Sometimes, if they're tied up in a complex hearing, I can't assign them readily. So my view is that in the future, we need to train more mediators, because I see a very prominent role for mediation; not that the appeal is going to go away, necessarily, but mediation helps to narrow the issues and sometimes inform the appellant.

Mr. Michael Prue: Now, would it be advisable for the Legislature, in considering future appointments, to look at people who would be mediators and who would primarily be responsible not for hearing appeals but for mediating?

Ms. Marie Hubbard: Well, at the moment I couldn't afford not to have somebody who not only adjudicates but mediates. We need both. Unless there was a specific group of mediators, it may be something that could be considered, but I think we'd need a substantial budget for that, to appoint them. But I'm all about mediation. I'm very happy with our results. The ratepayers appreciated the mediation in some instances.

But training them is the issue. It can't be somebody who is untrained. There are various mediation courses that are high-level, one with the Osgoode group, you know—

Interjection.

Ms. Marie Hubbard: And others. York has a program. But these are university-level sessions. Harvard does; they have an excellent one at Harvard.

So this isn't just somebody who hops into a little side-line down the road and goes in and does one course on getting a certificate. I'm talking about serious mediators who understand the model of mediation, and that is not simple. It's a very complex matter, understanding what model one is going to use before they go into the mediation. So certainly the standing committee could look for that talent. I think it would be good.

Mr. Michael Prue: In terms of—I still have time?

The Chair (Mrs. Julia Munro): Yes.

Mr. Michael Prue: Okay. In terms of the backlogs—I don't even know if there is a backlog. Certainly there is a waiting time, I understand, of about three months from the time when an appeal is launched until the time that it's heard. Is it advisable to leave it at that length of time in order to allow the parties to get prepared? Can it be speeded up, or is it—

Ms. Marie Hubbard: Listen, I take great pride in calendar. I'm involved in it and by statute I have control

of it. I am very proud to say that I have parties, and particularly the bar sometimes, who say, "You've booked this too fast. We're not ready to go."

We do not have a large backlog. The variances and consents are put on right away, as soon as we receive them. Motions—and we receive a lot of motions—are booked immediately by me. So there are no delays. We co-operate through the planner/case worker with the various parties, and we expedite because we understand people want building permits.

The consents and the variances usually involve an addition to a house, a deck, putting on another storey or something of that nature. So people save their money; they want to embellish their properties. They need building permits. We understand that, and we need to get the decisions out fast and turn around, so everybody benefits.

Mr. Michael Prue: The City of Toronto Act gives the authority to the city of Toronto to set up its own appellant procedures.

Ms. Marie Hubbard: Yes.

Mr. Michael Prue: I understand they haven't done it to date.

Ms. Marie Hubbard: No.

Mr. Michael Prue: If and when they do it, and when and if other municipalities might follow suit, would that take some of the pressure off the board?

Ms. Marie Hubbard: No. The complex hearings will still end up with us. And I don't see that happening, frankly. I have very good communications across the province with major players in the cities, and I don't think they want to get into that business.

Mr. Michael Prue: Well, I have to assume the city of Toronto asked for that. I can't think that the province just dangled that out there.

Ms. Marie Hubbard: No.

Mr. Michael Prue: But are they having second thoughts? Is that what it is?

Ms. Marie Hubbard: My intelligence says yes, they are, and they're not going to do it.

But this is a great city. Toronto is a great city, and it's quite impressive. I think the board understands the city. We understand it from many perspectives. It's complicated, complex. We certainly know that in some of the districts or wards in the city, there are interesting players. Everybody has their own view. But overall, at the end of the day, I think things work out pretty well for the city.

Mr. Michael Prue: Those would be my questions. Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. Mr. Johnson.

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Mr. Rick Johnson: As someone who's lived just northeast of the GTA for over 30 years, I just want to thank you for the years of community work that you've put in both to your local community and to the province. I know that your experience and wisdom are greatly appreciated and will be missed. I just want to say thank you for all of the work that you do and have done for us,

and I hope that you will, as Mr. Klees said, impart that wisdom to the government so that we can take great value in it.

I read somewhere that the majority of fertile farmland in this province and likely in the country can be seen from the top of the CN Tower. That of course would be on a Monday after a rainstorm with a northwest wind. But the provincial government's new vision to strengthen Ontario's communities seeks to make them more sustainable by reducing urban sprawl, preserving green space, protecting natural resources and building improved communities. How does the OMB's decision-making process reflect that and how does it weigh these objectives in considering specific cases?

As I drive from here home, I drive over what used to be great farmland which is now housing and shopping malls. What is the OMB's role in—

Ms. Marie Hubbard: We follow the growth plan. I think the growth plan has many pluses because it directs development to settlement areas, directs development where the infrastructure is already placed. I think it's a good piece of legislation. I may not agree with all of its demographic data, but on the other hand I'm sure that that will be reviewed by the necessary people. We pay attention to that.

Urban sprawl is a problem, but it depends what you think urban sprawl is. If you talk to 10 people, you'll get 10 different definitions. The growth that you see isn't necessarily endorsed by us. I'm not sure what you're thinking of specifically, but planning and development of communities is a very serious matter, and municipal councils have to pay attention to that and decide where they're going and what they're doing. I have a lot of concerns in some areas.

Mr. Rick Johnson: Thank you.

Mr. Michael A. Brown: I too want to congratulate you. I was particularly impressed when I asked you about the northern municipalities, that there seemed to be a good understanding of some of the issues that we face daily, and often it is seen in places where growth is not a big pressure; we wish it was in many cases, but we do not—the planning process, not just the OMB but the planning process in general is seen to be an impediment to moving because we don't see the growth pressures that may cause dislocations in the community etc.

Ms. Marie Hubbard: Right.

Mr. Michael A. Brown: My question is not really a question so much as a statement about how the Planning Act in general may take into account the difference in communities as far as making the process much more accessible. As I pointed out before, we don't have a lot of planners or sophistication at that level in our communities. I, as a member, and I'm sure Mr. Ramsay and other northern members would tell you that the frustration with moving projects forward is intense. In our area, we get a lot more of that as politicians than we ever get about somebody who wants to put something here that's inappropriate etc.

Do you have any thoughts about what suggestions we might make to the Planning Act to be able to move

forward some of what in urban areas may seem big deals but in smaller places may seem common sense, so let's get this going?

Ms. Marie Hubbard: Well, you know what? It's an interesting question. I pay a lot of attention to the north because I have three members who live in the north. They've educated me immensely about the lack of jobs, the issues of forestry and the lack of employment in the forestry areas, lack of money—many decisions impact. So planning is centralized with the province, and I would encourage you to speak with Deputy Minister Fareed Amin, who's got a good handle on the province. I think those kinds of communications have benefited me, and maybe he can help you and assist you in that area. But we could have quite a long chat about the north. It's very unique—unique things are happening there.

Mr. Prue mentioned Michipicoten. Michipicoten has a huge harbour and they trek aggregates across Lake Superior, the only jobs in that area—there are 40 jobs. Of course, the OPA was approved by our board based on good evidence. But sometimes what happens in the north, and I say this with respect, is that people move into the north on the little lakes etc., but they don't want anybody else in. Do you understand me? The north suffers from this. You can take Muskoka. They got fed up with Lake Muskoka, so some of the appellants went over to Lake Superior and built very wonderful mansions on the lake. So they want to shut down the only industry in Michipicoten. You know what I mean?

Mr. Michael A. Brown: I happen to represent Wawa and Michipicoten—

Ms. Marie Hubbard: Well, there you go. So you know exactly what I'm talking about. You have to be mindful as their representative of what the needs of that community are, in my opinion, and always be wise.

Mr. Michael A. Brown: Thank you.

The Chair (Mrs. Julia Munro): Mr. Rinaldi?

Mr. Lou Rinaldi: Yes, just a question. In 2004, the Ministry of the Attorney General did a financial audit to assess the operation and management processes. Can you give some outline of what the outcome of that was and what changed?

Ms. Marie Hubbard: We can certainly do it, but I do want to tell you, and then I'll turn it over to Mr. Arlani—listen, I have my first five cents in a tin can. Do you hear me? So when I'm dealing with public money, I make very sure that we are all under the tent and following the guidelines of the government, and that's what we are doing. Every morning at 7:30 a.m., I approve expenses. I see them myself. I know exactly and I can reconcile those expenses with my calendar. In other words, I know where the member's been and I know exactly what's going on. In terms of the audit, we stood in good position, and I'll let Mr. Arlani answer you.

Mr. Ali Arlani: I joined the board in 2004, just after that audit, and the main focus of the audit was on controllership. We have put in place a very rigorous and strong controllership unit. Everything related to financial aspects of the board, whether they're expenses or con-

sulting contracts or anything, has to go through that controllership unit before it can go to the chair or myself for approvals. That has been the main area.

The other area which was recommended as part of the audit report was the whole issue of benchmarking: How do we measure the performance of the board? That was an area where we also worked during the 2005-06 time frame to make sure that if somebody is looking from outside, they can see exactly how the board performed, what kind of timelines we are following and how we are expending our resources at the board.

Mr. Lou Rinaldi: Thank you very much. If I can just follow up with another quick question, if I may: I know in our office we experience that somebody sends an e-mail with a question and within five minutes if you haven't replied, it's taking too long. That's today's technology, I guess. The question is, back in my municipal days, more so than maybe now, I heard comments like, "We filed for an appeal, and it's taking so long"—you know, you've got to do your due diligence. In your wisdom, from the years you've been on the board and as chair, how far off are we on the appropriate time frame? I know from application to application it varies, but in general, have we met targets or have we—

Ms. Marie Hubbard: Yes, we do have targets, and we're meeting all of our targets. We exceed our targets in terms of getting bookings in. We're looking very good. I have very few hearings that are needing to be booked on my computer at the moment. Is that correct?

Interjection.

Ms. Marie Hubbard: I'm on top of that every minute of the day, I guarantee you. Any chair has to be. That's what we do. We process appeals; that's what our job is. It's very critical that it's very hands-on.

Mr. Lou Rinaldi: Thank you. Madam Chair, I don't have any more questions. I just want to take the opportunity to thank you for, as MPP Johnson said, your hard work, and not just you, but staff as well, because it's not an easy task to be an adjudicator because there's always a winner and a loser. So thank you very much.

The Chair (Mrs. Julia Munro): Thank you very much. This concludes this morning's session. I want to thank you very much, Chair Hubbard, for being here today. I appreciate the expertise that you demonstrated and certainly that of your associates.

Thank you very much. This committee stands recessed until 1 p.m.

The committee recessed from 1200 to 1302.

GLENN BROOKS

The Chair (Mrs. Julia Munro): Good afternoon, ladies and gentlemen, and welcome to the Standing Committee on Government Agencies. This afternoon we are going to hear from a number of presenters and each will have a total of 30 minutes.

I'd like to have Mr. Glenn Brooks come forward. Good afternoon, Mr. Brooks, and welcome to the standing committee. Please make yourself comfortable there.

As you may know, you have 30 minutes and you may wish to take some or all of that time, but any remaining time will allow for questions from the members of the committee. So, begin when you're ready.

Mr. Glenn Brooks: Madam Chair and committee members, I thank you for this opportunity to speak to the Standing Committee on Government Agencies on the topic of the OMB.

As committee members are well aware, the Ontario Municipal Board can play a major role in the municipal decision-making process in planning matters. Almost every municipal decision under the Planning Act is subject to review by the board. In fact, the only decision not subject to appeal is the lifting of part lot control.

While changes to the Planning Act have been made over the years, and welcome recent revisions have been made to the Planning Act to strengthen the role of municipal governments, the reality appears that too often it is the board and not the democratically elected councils that are making major decisions as to the future planning for Ontario's municipalities.

In my comments to the committee, I would like to focus on three themes: accountability, transparency, and the question of weight, a legal term, given to directions for the Legislature.

Accountability: Every four years, you and I have to answer to the electorate for decisions we have made, the votes we have cast. If we have not served our constituents well, come the day for being sworn in we will find ourselves on the outside looking in.

The democratic process makes you and me accountable for what we do. Example: I am a firm believer in private property rights. I would not suggest for a moment that the funds and time that everyone has invested in their property should be taken away simply as a result of the outcome of an election. Similarly, I as a property owner should not have any kind of expectation or feeling of entitlement that the value of my property will increase as a result of municipal action. Nor would I suggest that you or I have the right to go to a body that is not accountable for municipal taxes or provincial or federal budgets and have a municipal decision restricting growth overturned if that decision allowing growth turns on a public expenditure in infrastructure of any significance at all.

Here, I am not talking about whether to permit a triplex living unit in place of a single or, indeed, whether the best use for a parcel of land is several houses or a retail store, although these matters are of importance to those who live in the area. Rather, it seems to me to be fundamentally inappropriate that an unelected and unaccountable politically appointed person or persons can render decisions permitting growth to occur when the inevitable result of that decision will be to require a municipality to spend money on infrastructure that council has stated it does not wish to spend.

Growth-related revenues do not completely pay for required growth-related infrastructure.

The government and the Legislature have been of great assistance to municipalities by limiting the right of

applicants to appeal decisions by refusing the expansion of settlement areas, be they urban or rural. However, if municipalities are to be masters of their own capital budgets, it is my opinion that further strengthening the role of municipalities in the Planning Act is necessary.

Transparency: There are those who refer to the OMB as protecting the ability of the average citizen to intervene in planning decisions. It is true that having made submissions to council, and with a cheque for \$125, anyone can appeal any decision to the Ontario Municipal Board. But what are the real chances of success for the average person if on the other side of the issue there is a corporation or indeed a municipality fully backed by lawyers and professional witnesses? Let us be frank with one another: not much. If average ratepayers are concerned about a development application, they have only one hope, and that is to convince their council that their concerns are well founded. Absent those municipal resources, their chances of success are slim to nil, and slim left the building decades ago.

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Particularly in smaller municipalities, even the ability of a municipality to contest an application is not going to be solely dependent upon the merits of the case. The costs to the city of Ottawa to contest a recent development application to permit 1,400 dwelling units are approaching \$1 million. We all acknowledge that the funds needed to contest development applications have to compete with other municipal needs such as fire services, roads, parks, recreation and social services. Even with a complete certainty of success, and very rarely is there a complete certainty, how many small municipalities are going to spend that kind of money to oppose a development application? The truth, if we want to be transparent, is that in most cases the municipality is going to try to get from the development what it can, and not expend scarce resources in fighting the developer before the board.

If the public is going to have a more meaningful role in hearings, it seems to me that direction needs to be given with respect to where the hearings will be held. Prior to the amalgamation process that Ontario went through in the latter 1990s and the early part of this decade, municipalities were smaller and there was a reasonable prospect that hearings, other than those perhaps in the former Metropolitan Toronto, would be held in relatively close proximity to those who would be most affected by the outcome. With the creation of larger municipalities, hearings are now, in most cases, taking place far removed from the affected communities, thus limiting the general public's ability for greater participation. It ought to be incumbent upon the board to hold at least one public evening meeting within the affected community to allow for the public voice to be heard. Surely, if hearings are to be transparent, more accountable and more accessible, they should be held close to those most affected by them.

Weight: The issue of weight to be given to evidence is an abstract legal concept, yet it is at the same time one of the most crucial concepts in understanding board

decisions. Whether one side or the other side is successful in a hearing so often depends on the weight given to the evidence. When it comes to a board member deciding between the evidence of two professionals, or even two lay persons, that may be the way it has to be. It is the board member who has heard the witness speak and observed how the witness responded under cross-examination when his or her evidence was tested.

But where the Legislature of Ontario has said that the municipal board "shall have regard to" any decision under the Planning Act, I would suggest that one line in a board decision that the board has considered council's decision is not sufficient, is not transparent or informative, nor is it a fair assessment of the weight to be given to that legislative direction now within the Planning Act. Surely, for example, a council vote of 19 to 5 cannot be weighted equally with John Doe's generalizations. Therefore, it is absolutely imperative that a more demonstrative and consistent weight-assignment accounting system be implemented in arriving at a conclusion regarding "shall have regard to." To lend credence to that point, it is interesting to note Justice Joan Lax's comment re OMB's Toronto decision in the Queen West Triangle area: "The board provides no rationale or analysis to support its conclusion that the projects were in the public's interest."

However, there are times when the board hits the target when enunciating what needs to be done with respect to weighing policy direction. In the decision to permit the construction of what is now known as Scotiabank Place, home of the Ottawa Senators, the board considered the obligation to have regard to policy, in that case the Foodland Guidelines. The board said—I have quoted this and I'm not going to read it to the members of this committee. This passage provides for a detailed process for the board to go through where it is required to have regard to a policy. It is followed in that decision by some 30 paragraphs where the board goes through the test.

That, I would suggest, is an example of proper weighting of government policy. It is, in my opinion, a transparent and a more proper application of the "have regard to" test than that provided in the OMB's Minto decision. A one-line comment is not acceptable.

What, then, can be done to ensure section 2.1, requiring OMB members to have regard to municipal planning decisions in order to give proper weight to council and community decisions? In amendments to the Planning Act, the government has now required that where a zoning or official plan amendment application is refused, council must now provide reasons. It ought to be a requirement in the Planning Act that the board, where it does not follow a municipal council's decision, provide reasons why it has not done so. This would emphasize the heightened role of municipalities in the revisions to the Planning Act.

Conclusion: Madam Chair and committee members, it is you and I and my municipal colleagues across the province who are responsible for the planning for Ontario

and our respective municipalities. The province, through legislation such as the Planning Act and through the provincial policy statement, provides its planning vision for Ontario. It then falls to the municipalities to implement that vision in light of the particular local circumstances. Municipal planning decisions must be consistent with provincial policy. Municipalities simply cannot say, "Thanks for your policy. We have read it, but we are going to choose not to follow it."

The planning decisions of municipal councils deserve a similar degree of respect. While the province has made attempts to strengthen the role of councils in the Planning Act, it still seems that all too often the decisions of council are treated as way stations on the way to the Ontario Municipal Board.

For reasons of accountability, transparency and giving proper weight to both municipal and community roles, I leave with you the recommendation that there is more work to be done. In short, government ought to rescind Bill 51 or clarify its intent relative to the empowerment of municipal councils and community decisions related to planning matters. Thank you, Madam Chair.

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The Chair (Mrs. Julia Munro): Thank you very much. We have about five minutes each, and I'd ask Mr. Prue.

Mr. Michael Prue: Thank you. As a former mayor, a former municipal councillor with the megacity of Toronto, I want to assure you that in Metropolitan Toronto, the hearings were always held in close proximity to those who would be most affected. Sadly, like smaller-town Ontario, that's no longer the case.

Mr. Glenn Brooks: That's right.

Mr. Michael Prue: Every single one that we did in East York was held in East York, mostly at the civic centre, but we did, from time to time, even go abroad from there. That does not happen anymore.

Anyway, in terms of what you stated, I think it's a fairly good suggestion. You write, and you said, "It ought to be a requirement in the Planning Act that the board, where it does not follow a municipal council's decision, provide reasons why it has not done so. This would emphasize the heightened role of municipalities in the revisions to the Planning Act." I agree that that's probably a very sensible solution. It wouldn't cost any money.

The board, from time to time, though, does have cases where the council has not followed the direction of its own planner. Would that be sufficient, just to say that they did not follow the advice of the planner, that the town or city's planner was correct and the town council erred in not so following it?

Mr. Glenn Brooks: In the particular case that we're talking about in the city of Ottawa, unfortunately, the planning department did not take in a very important component of the plans submitted to it, and that was dealing with traffic, transportation. That whole component was left out. Had that component been brought back in, immediately everyone would have said, "You know what? This plan won't work because the planners

and engineers say it won't work." But, unfortunately, that did not occur.

Mr. Michael Prue: I take it, then, in this particular case, and I'm not totally familiar with it, the Ontario Municipal Board sided with the municipality's plan, not with the elected officials.

Mr. Glenn Brooks: That's right.

Mr. Michael Prue: Now, that's a little bit of a conundrum that I have, then. Where the council chooses not to follow its own planning advice, would you still expect the OMB to detail why council was wrong, or simply to state that they felt the municipality's planners were correct?

Mr. Glenn Brooks: I think that's a good comment, and that comes right to the crux of the problem, that you have a planning department made up of planners, and they give their interpretation of what the plan actually says. It's open to interpretation. They write their comments, and it is then up to the elected people whether to agree or disagree with those. In this particular case, those elected said, "No, that's not our interpretation."

Mr. Michael Prue: You are speaking, I take it, as an elected member of council, but not on behalf of your council.

Mr. Glenn Brooks: I'm speaking as an elected member of council, yes.

Mr. Michael Prue: Okay. Other elected councillors, even some cities and towns, have called for the outright abolition of the board, that the final decision should be made by the duly elected council, because they are responsible to the electors, and if they make a bone-headed decision, I guess they can be turfed in the next election. You don't go that far. Can you tell me why not?

Mr. Glenn Brooks: I don't go that far because I think there is an important role to be played by a third party, and I think the OMB has, in many instances—and I quoted you one example here with Scotiabank—been right on. But they've been right on because they went through a process, a test, and everyone could see that, yes, we have looked at all the evidence and we have weighted this evidence, and there's our conclusion. If the board is not going to give its rationale or reasons for its conclusion, then I would abandon that board. I think it's incumbent upon the board. It's incumbent upon me, as an elected official, to stand up in front of my constituents and say, "This is why I made this decision. It's based on this, this, this and this."

Mr. Michael Prue: Thank you very much.

The Chair (Mrs. Julia Munro): Thank you. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Councillor Brooks, for coming to the committee. Having spent 12 years in the municipal sector, I understand somewhat your position. A couple of questions, one based on your submission: On the second page, you talked about the location of hearings.

Mr. Glenn Brooks: Yes.

Mr. Lou Rinaldi: If my memory serves me right—and I spent 12 years, although it's a much smaller

municipality than Ottawa—and the chair of the board confirmed it here this morning, the municipal clerks or municipal staff, along with board folks, make the decision on the locations where they have the hearings. Yet here you mention that it's far removed. Can you elaborate on that a little bit?

Mr. Glenn Brooks: Well, I'll speak about my municipality, for example. As we all know, the city of Ottawa is about four and a half times the area of the greater Toronto area and about half the size of Prince Edward Island. That is a large geographical area.

In this particular case that I asked for leave to appeal an OMB decision, it was the fact that the community had requested from the chair that they have at least one meeting in the village of Manotick, which is about 20 or 25 kilometres from where the meeting was held, and that the meeting be held in the evening so that the community—because mostly everyone works—would have an opportunity to be there. That's my point: If the OMB is going to make a decision based on how this community is going to grow, how it's going to be managed, then I think at least one meeting should be there.

Mr. Lou Rinaldi: My point, though: The municipality via staff, clerk, or whoever makes those decisions, had no role in the decision-making?

Mr. Glenn Brooks: In fact, we did ask. We did ask that one meeting be held out in the community, because we had done this before.

Mr. Lou Rinaldi: I don't want to belabour it, it's just that this morning the chair—

Mr. Glenn Brooks: Yes. We'd asked.

Mr. Lou Rinaldi: From your submission, and correct me if I'm wrong here, I believe you accept the role of the municipal board, although to what level—you accept that they need to be there to resolve some of those disputes, correct? Do I get that sense?

Mr. Glenn Brooks: The board has a role to play, providing the board is prepared to, as Justice Joan Lax says, provide the rationale, the reasons for.

Mr. Lou Rinaldi: Okay, that's fair. That's what I got; I just wanted to be sure.

Having said that, being in a semi-judicial process, there's normally a winner and a loser, to put it in plain words. How do we adjudicate that? I mean, obviously, depending on what decision—and I'm not referring to any specific decision—normally that's why it gets there. Do you have any suggestions for the board, at the end of the day? I understand that you want to give the rationale, but sometimes if I put in \$125 and I don't win, I'm not happy. I mean, that's the bottom line. Is there a process that the board could do better? Or maybe legislation needs to change—I have no idea—because there is going to be a winner and a loser. Any suggestions?

Mr. Glenn Brooks: Well, my suggestion is, and it's in the last paragraph, that the government has got to clarify what it really means when it says, "shall have regard to." What does that mean? What does it mean to empower municipalities to make decisions? You're right: There will be winners and losers. But who's making that

decision? Is it going to be the elected people or somebody who drops in to your community and does the best he or she can do?

Mr. Lou Rinaldi: Then are you suggesting that all the powers should be reverted to the elected council?

Mr. Glenn Brooks: Yes.

Mr. Lou Rinaldi: So we don't need the municipal board, then?

Mr. Glenn Brooks: As I said—

Mr. Lou Rinaldi: I'm just trying to get some sense of how—you know, as legislators here, we look at ways of how we can improve things. I'm not arguing any specific case. I guess all I'm saying is that if we're going to leave all the decision-making to municipal council—I'm not arguing one way or the other—then why do we need a municipal board?

Mr. Glenn Brooks: That's exactly right. If the government of the day says, "Councils in the province of Ontario, you shall be making all the planning decisions," end of quote, that's it.

Mr. Lou Rinaldi: So if legislation was to change to that, then you suggest that we do away with the Ontario Municipal Board.

Mr. Glenn Brooks: Yes, and if you lived in my ward or any other riding, then you have an opportunity every four years to voice your concern.

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Mr. Lou Rinaldi: Do I have more time?

The Chair (Mrs. Julia Munro): We're out of time. Thank you very much.

Mr. Lou Rinaldi: Thank you very much.

The Chair (Mrs. Julia Munro): Ms. MacLeod.

Ms. Lisa MacLeod: Thanks, Madam Chair. Following up on my colleague for Northumberland's point of view, I want to talk a little bit about accountability. As a city councillor for my riding, I understand why you're here. Obviously I invited you because I think it's important to talk about accountability for unelected bureaucrats. I think that if anybody read the news in Ontario in the last three weeks, we would read about accountability of government agencies, whether it's OLG, MPAC or eHealth. Right now we're discussing how we can hold government agencies and their decisions accountable to the public. You've made some very important points, I think, in terms of needing to explain their rationale with respect to how they weigh municipal decisions. My colleague Mr. Prue earlier today asked the chair of the Ontario Municipal Board if municipalities' weight should perhaps be increased compared to the other parties, to which she said no. But you do make a very important point, that it's "inappropriate that an unelected and unaccountable politically appointed person can render decisions permitting growth to occur when the inevitable result of that decision will be to require a municipality to spend money on infrastructure that council has stated it does not wish to spend." That's your quote, for Hansard.

You've indicated, of course, that Bill 51 needs to either be amended or scrapped. You've also stated that there is a role for the Ontario Municipal Board so long as

there is an ability for them to be accountable to the public. I'm wondering if you have any direct views on how we make this agency, or any other, for that matter, more accountable to the taxpayers of this province.

Mr. Glenn Brooks: I think this committee has a major role to play, not just with the Ontario Municipal Board but other agencies as well. The accountability, the skepticism out there in the general public—and I don't need to tell you people this. They're very skeptical of politicians and what they say. Legislation is brought forward and the next thing you know, people think this is what the legislation is but this is how it's implemented. At some point in time—and I tell you, I've been in this business now for 32 years, as a regional councillor, councillor, mayor and CEO, and the skepticism out there is, "What are you people?"—what are we—"doing?" We say one thing and we're doing something else. Then all of a sudden, you get this in the newspaper. You've got the fox in the chicken coop, guarding the chicken coop. This committee, hopefully, will start to put the finger on it and say, "Look, we want accountability here. We want to understand where the taxpayer dollars are going and why they're going there." That's accountability.

Ms. Lisa MacLeod: Councillor, would it be safe to say, then, that the key recommendation from this committee going to the minister is to put in place accountability and accessibility recommendations moving forward so that members of the public are able to attend meetings a little bit more easily? You cited some examples. My colleague opposite suggested that it's a little bit more cut and dried than that; quite frankly, I'm not sure. It seems to me, just by the sheer number of folks who have contacted this committee over the Ontario Municipal Board, that we could be doing a little bit better job. I think even the municipal affairs minister himself in a local newspaper in Ottawa had suggested that it could be a little bit better.

Do you have any closing comments, Councillor?

Mr. Glenn Brooks: Yes. I would just like to say this to the Premier of the province of Ontario: In opposition, he made certain comments about the OMB and the need to reform the OMB. This piece of legislation, Bill 51, is a step in the right direction, but it's got to be clarified, it's got to be tightened up if it's going to be meaningful at all. Otherwise, you're going to have municipalities and groups within municipalities before the OMB because the interpretation is so loose. "Shall have regard to": What does that really mean?

The Chair (Mrs. Julia Munro): Thank you very much. That concludes our time available. We appreciate you coming here today and giving your opinions.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair (Mrs. Julia Munro): I'd like to ask Theresa McClenaghan from the Canadian Environmental Law Association to come forward. Good afternoon, and welcome to the committee.

Ms. Theresa McClenaghan: Thank you, Madam Chair. It's my pleasure to be here and I appreciate the invitation to attend and appear before you and have some discussion, time permitting.

Very briefly, many of you are familiar with the Canadian Environmental Law Association. We were incorporated in 1970 and became an Ontario legal aid specialty clinic in 1978. Accordingly, we provide direct representation and legal services to low-income and vulnerable Ontario communities in environmental law matters where they would be otherwise unable to afford or obtain legal representation. We also undertake law reform, public legal education and community development that advances protection of the environment, with a particular view to the interests of low-income and vulnerable communities.

CELA has had a long-standing interest and involvement with the Ontario Municipal Board and its governing legislation and with the legislation that it administers. One of our priority areas of focus is to ensure public access to environmental decision-making, and the OMB plays, in our view, a critical role in that respect, especially, of course, with respect to land use decisions. Our involvement includes occasional appearances before the board as counsel and, over the years, various appearances on hearings held together with other tribunals, for example, under the Consolidated Hearings Act.

Much more frequently, we provide summary advice to members of the public who are unrepresented and who are involved in proceedings before the board. In that respect, we assist them to find expert witnesses, we review the information and concerns that they have, and give them summary advice as to how the process works and how to be effectively involved within the resources that they have available. Members of the public contact us with a broad range of concerns, which could range from natural heritage protection, such as wetlands, woodlands, the Niagara Escarpment and Oak Ridges, to transportation, land use density concerns, impacts of aggregate development and general land use conflicts. Our involvement has also included very extensive input into various versions of the Planning Act, the provincial policy statement, the Municipal Act and other pieces of legislation over the years.

I will take a few moments to speak specifically to some of the changes the province made relatively recently in the 2005 amendments and the impact on the OMB matters since then. We've also been very involved over the years in other specific initiatives, such as source water protection and water and energy conservation, and have assisted members of the public with advocacy to ensure integration of municipal decision-making with other environmental protection goals. We are also often involved in specific initiatives of local government to advise and assist members of the public or litigate in the courts to uphold the right of municipal governments to enact bylaws that are protective of the environment and public health.

With that overview, let me begin by stating that, on the whole, the OMB fills a very important and critical

function. There are many, many specific conflicts of land use and its other areas of jurisdiction, and of course the board was created in order to move these conflicts out of the court system and into a specialized tribunal.

The board was also created with the aim of allowing persons to appear before it without necessarily having to retain legal counsel. We would not advocate returning to a system where the courts are obliged to deal with all of these conflicts or obliged to review all of the municipal decision-making that is challenged by applicants or members of the public.

However, there have been significant issues over the years with the ability of members of the public to attend and present matters before the board in an equitable manner, and these have been of concern to CELA. Some of these issues were the subject of the 2005 amendments, which I mentioned earlier. For example, among other things, a new rule was introduced requiring land use amendment applicants to have filed a complete application before any time for decision-making by the relevant municipal council would begin to run. Other issues were mentioned this morning by the board chair, such as the citizen liaison office.

The complete-application change was a major improvement, since before that, often applications were filed with very scanty information and parties waited until the matter went before the board to file their "real" evidence and studies. This presented significant issues of access and transparency, to echo the theme of the previous witness; for example, a lack of public access to the information before a municipal council made its decision, and the lack of information for councils themselves on which to base their decisions. You may all recall various situations where there was outcry over the years because the OMB was perceived in those situations as usurping the function of local elected councils.

With the new system, as intended, the public can see the information, councillors can have the relevant information and can make well-reasoned decisions—or are intended to make well-reasoned decisions—taking into account all of the factors they wish to consider, and the board should now be able to exercise its function more properly as an administrative tribunal and reviewing body instead of being essentially the first decision-maker, which was the case before, when much of the evidence was being tabled before them for the first time rather than having been tabled before anyone else.

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However, an ongoing area of difficulty that CELA remains concerned about is the unevenness of resources. Applicants filing land use change applications generally have a financial imperative and can justify spending significant sums of money on expert consultants and witnesses to support their applications. The public, on the other hand, can hardly afford to do so, and when the public is raising legitimate concerns but lacks financial resources, the board often feels obliged to accept the evidence of the experts.

CELA has long advocated a renewal and expansion of the intervenor funding system that Ontario utilized many

years ago, which provided members of the public with access to appropriate expert advice and representation in certain environmental disputes. This resulted in much better decision-making by all concerned and much better public acceptance of the final decisions. I would add that that was true even when the public didn't win, at the end of the day. The fact that they were sure their point had been heard was extremely important to their acceptance of the final decision. Such a system does require strict control to ensure funds are granted in legitimate cases and for valid issues and are supervised, but the tribunals which were administering the Intervenor Funding Project Act at that time had developed a very strict and credible process to provide that supervision.

Related to that issue, CELA also advocates that the OMB should relax its tests as to how it receives evidence and who is an "expert." The OMB practically from the outset has been, compared to most tribunals, a highly formalized board, and the aim of allowing for easy access by unrepresented members of the public has never truly been realized, in our view. Although the board members are very good at recognizing members of the public who have an interest, in granting them standing before the board and in providing various means to present information, nevertheless, the overwhelming weighting of evidence is toward "expert" witnesses, analogous to the evidentiary rules in a contested litigated court proceeding.

CELA repeatedly sees clients who decide not to proceed before the board either on their own or with representation because of the inability to afford to spend the many thousands of dollars it would typically cost them to retain expert witnesses whose evidence would be accepted by the board.

There may well have to be a combination of statute reform and board procedural reform to make the board's proceedings as accessible to the public as we would wish and to ensure that all kinds of valid knowledge are recognized and given appropriate weight by the board.

By way of comparison, at least since the 1970s Berger inquiry, which you may remember, into a proposed Mackenzie Valley pipeline, and in many examples and the academic literature published since then, it has been repeatedly recognized in theory that the knowledge and expertise of local people in any development proposal is a valid, worthwhile and often unique contribution to decision-making proceedings. But in our view, it's given inadequate weight.

Another issue that has been raised in the past is the familiarity of the board's members with environmental issues and some of the specific technical issues that are raised. CELA has seen an overall improvement in this area, as we understand this has been taken into account in appointments as well as in the board's own internal training programs. Continuous improvement in this respect is important since, almost by definition, so many of the board's decisions have impact on the environment, even when the case is not framed that way. For example, issues of density, boundaries, form of development,

energy utilization, transportation, infrastructure, water etc. all contribute to use of resources and greenhouse gas emissions and much else.

Finally, one area in which CELA has been focusing our advocacy is the question of environmental equity in decision-making, and this is an across-the-board issue. Many of the approval systems in Ontario, including land use planning, do not directly require the decision-makers to take account of environmental equity considerations. For example, is a low-income community being asked to take the brunt of industrial development in the region and therefore more directly exposed to air emissions, with negative health consequences? Are barriers to full community involvement fully recognized when transportation corridors to service land use cut access that communities previously had to services and amenities? These are just some of the examples that arise.

We will be continuing to pursue this area of advocacy with all of Ontario's decision-makers and raise it now as one example in which the board, even within its own existing rule-making and legislation and its ability to ask for additional information from parties, could be making a significant difference to vulnerable communities.

Again we thank you for the opportunity to provide these comments, and I would be pleased to discuss these thoughts and any other questions you may have.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin then with Mr. Rinaldi.

Mr. Lou Rinaldi: How much time do we have?

The Chair (Mrs. Julia Munro): You have about five minutes each.

Mr. Lou Rinaldi: Thank you very much for your presentation. It's always good to have you folks present to us. A couple of questions, and my first question is more in general: Can you tell us what your organization's feeling or experience has been when dealing with the board on an ongoing basis with different issues?

Ms. Theresa McClenaghan: On an ongoing basis?

Mr. Lou Rinaldi: Yes.

Ms. Theresa McClenaghan: First of all I have to say the board members, now and in the past, have always been very professional and, as I said, very good at recognizing the interests of clients, giving them standing, that kind of thing. So we have no issues like that. Our issues are much more systemic and have to do with, as I mentioned, the formality of the board and the way it operates very much like a court. So although parties may appear before the board without legal counsel, on the other hand the board does weigh evidence much like the rules of a court. It uses evidentiary rules similar to a court. It takes into account whether people are qualified to be experts in the same way that a court does. Those issues are problematic for our clients.

Often when we as counsel are appearing before the board, we have clients who have been able to afford to fundraise and seek expert evidence, and then we're on a kind of a level playing field. But many, many times clients we're advising on a summary advice basis, where we don't go on the record and the board would never see us, don't have those kinds of resources. They may not

feel that they're able to present their case as ably as they would if they had more funds, and that is an issue.

Mr. Lou Rinaldi: If I could follow up: Back in 2004, during the planning, we formed a public consultation process. Documents were submitted by the Canadian Environmental Law Association. Some of the comments were "that there should be appeals to the Ontario Municipal Board from municipal council decisions," and that it's "important that municipal decisions be made in accordance with provincial policy." Can you share some of your thoughts about the function of the MB, from those statements that you made?

Ms. Theresa McClenaghan: Yes, and I was involved in preparing those statements at the time. We were very involved at the time in making representations to the then-minister and his staff and so on with respect to some of those issues that had previously been problematic. As I mentioned, things like the complete application, the citizen liaison position that the board chair mentioned this morning: A number of the suggestions that we made were taken up and put into the new legislation, and we were very appreciative of that. We think that's very important and very helpful. So we have seen that, legislatively and systemically, those things are improving. And the need to act in accordance with provincial policy we agree is quite important.

As I mentioned, we do see a very valid role for the board. So even though we're raising issues of access around resources and weighting of evidence, that does not mean we don't support the function of the board. We definitely do support it, because we wouldn't like things to go back to the really old days, where there was no board and these kinds of things, by default, would go to courts for judicial review. Of course, that would not be good at all for public access.

On the other hand, decision-making does need to be framed in a policy context, and we do see the role of the province, in terms of setting that policy context, to be extremely critical. At that time the provincial government, as provincial governments before had done, was also in the process of revising the provincial policy statement. That was very important too. And we constantly make comment about improving the provincial policy statement every time it's under review.

Mr. Lou Rinaldi: How's my time?

The Chair (Mrs. Julia Munro): One more.

Mr. Lou Rinaldi: One quick one. In 2006, you folks and the Environmental Defence, Sierra Legal Defence Fund and Ontario Nature and the Pembina Institute issued a joint media release about Bill 51, highlighting what they felt were improvements to the Planning Act, including increased consistency with provincial policy and enhancing public consultation on official plans and promoting the sustainable design of buildings and neighbourhoods. Can you give us your thoughts, after three years since that took place, based on those suggestions? Do you see any improvements or changes?

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Ms. Theresa McClenaghan: I would say there's some slight improvement at this point, but I have to put it

in the context that the reason, in part, would be that many of the decisions, by the time they've been getting to the board for resolution within these last three years, would have been applications which were submitted under the old rules, prior to those changes.

The point about the councils and the public having the actual information on which decisions will really be made, to our minds, was very critical. We felt that that was a very major problem that had been happening before. What was happening before was that a timeline started to run, and the applicant didn't even have to really have all their evidence before the council, and the councils would say, "Well, I can't make a decision; I don't know enough about this application." The timeline would run and it would end up before the board. Then people would say, "Okay, there's actually an appeal; we'll get serious and we'll get our evidence compiled." They can't do that now, and that's a very substantial improvement.

We're starting to see some of the payoff now from that, but it's only just lately. It will be important for all of those groups and it is one of the things we're discussing: to do an evaluation after probably another year or two, once most of the applications are under the new rules, to see how it's going.

Mr. Lou Rinaldi: Thank you very much.

The Chair (Mrs. Julia Munro): Mr. Klees?

Mr. Frank Klees: Thank you for your submission. First of all, with regard to access, the chair, when she made her presentation to the committee this morning, made reference to the citizen liaison office, which is a new initiative of the board intended to make access more available. Can you just comment, based on your practical experience, on how effectively that office is working and what you're seeing by way of changes to access as a result of that initiative?

Ms. Theresa McClenaghan: Firstly, I would say we were very pleased that that happened. As I mentioned, we had been advocating for something like that to assist, because our clinic and the couple of other places where people can go can't possibly help all the people who need that kind of information. In fairness, I think more work needs to be done in terms of outreach and making that facility known to people. I think, in fairness, most of the people who come to us are not aware unless they have called the board, and it's amazing: You'd think, "Well, wouldn't everybody call the board?" Many people don't know they can just pick up the phone and get help from an agency like that—so that kind of proactive outreach.

I can't comment whether the practice has gone so far as to make sure that it's standard information that's available to people who are involved in a contested matter at a municipal level. That might assist, if it was a standard blurb that they could contact that information for understanding what they can appeal and on what grounds, and what that would mean for them in terms of process.

Mr. Frank Klees: So are you making use of that office yourselves?

Ms. Theresa McClenaghan: Just in terms of referring clients to it, if we can't; yes.

Mr. Frank Klees: Okay. You state very clearly that there's a role for the board, that it performs an important function and an effective function, but you use terms such as "unevenness of resources" and "weighting of evidence." I'm interested in how you balance the need for what is clearly a quasi-judicial body that has a framework within which it must make its decision—provincial legislation, policy statements. How do you move from that to the concept of the weighting of evidence, in terms of being able to actually then give justification to rendering a decision? Does this not become, then, so subjective that at the end of the day you lose the very basis on which this board concept is based?

Ms. Theresa McClenaghan: First of all, I wouldn't say the board should make decisions without evidence and valid, tested information in front of it. That isn't the problem. The problem is that usually, if a member of a citizens' group who happens to know a lot about bird watching, say, were to give evidence and a biologist for a developer were to give contradictory evidence, it would be very hard for the citizen's evidence to be accepted, even though they may actually be much more expert for that particular forest and what is found year-round, seasonally and so on. The board really should be looking at what is valid evidence. If I have learned that this person actually does know his stuff, is recognized by the field naturalists in the area, has given talks and knows about this area, that's valid. So that's the concern there, because, as I say, that really is all too often a disincentive.

The crux of the problem is that this is not, as in private litigation, a dispute between two contracting parties, for example, over a monetary issue. There may be monetary issues underlying it—the right to develop versus not—but the board's role is to make a decision in the public interest, and the public community that is most interested in that community, most interested in the shape of the community, what the impact will be, really is entitled to have a voice before the board and then the public policy taken into account. So in that way, the board, as is the case in many other tribunals, does need to broaden what it will consider.

It's interesting in our litigation system that the higher we go in the appellate system, the broader the courts will look at relevant information. That's true, for instance, with our appellate courts and especially our Supreme Court. It's because they're looking more at the public interest, and they're not as interested in the private dispute. It's the broader interest, and the broader the interest, the broader the type of material that should validly be considered. Weighting is important, but they have to not be too restrictive in what they consider to be valid.

Mr. Frank Klees: Would you agree, then, that given what we know of how the board is constituted today, there would have to be a very specific mandate legislated by government to provide the board that latitude? Because they don't have that latitude today. Would you agree with that?

Ms. Theresa McClenaghan: Yes. As I said, I think it would be a combination of board policy and statutory amendment.

Mr. Frank Klees: Okay. Thank you.

The Chair (Mrs. Julia Munro): Mr. Prue.

Mr. Michael Prue: You've skirted around the issue but not directly head on. Do you receive intervenor status for any of the appeals that you attend? I know you don't attend many. Do you receive intervenor status?

Ms. Theresa McClenaghan: Or our clients—that's one board where usually we would attend for a client rather than CELA as the organization. Yes, we have done. When you say "intervenor," the way the board works, it would either be a party or a participant and we've helped people with both.

Mr. Michael Prue: Now, when you attend, do you get paid?

Ms. Theresa McClenaghan: We're a legal aid clinic, so we're paid by an MOU with Legal Aid Ontario. We don't otherwise get payment for attending. We're staff lawyers.

Mr. Michael Prue: Okay. Now, is it often the case that individuals have a tough time attending the board because it can be costly—

Ms. Theresa McClenaghan: Yes.

Mr. Michael Prue: —in terms of a lawyer, in terms of planning expertise, environmental expertise, heritage expertise, the kinds of things that an ordinary individual wouldn't have at his or her fingertips?

Ms. Theresa McClenaghan: Yes.

Mr. Michael Prue: Where do the monies come from to bring these people, or does it come at all?

Ms. Theresa McClenaghan: For our organization, it's legal aid, and then the community needs to raise the money for their experts. They don't need to raise the money for CELA, but keep in mind we have four lawyers and then we've got not only this board but the environmental tribunal, the courts, people who are injured by some kind of spill—you know, all kinds of things. So capacity is definitely an issue. So then we have to refer people to the private bar on the whole, and again affordability is a major issue. They then might need the legal fees as well as the expert fees, and it's a considerable barrier.

As I mentioned, there was experience a number of years ago with the Intervenor Funding Project Act, which did not extend to the municipal board, but it did extend to the environmental tribunals in the province and to the consolidated hearings, which did include the board then in those joint board matters. That did work very well because people could get that kind of expertise. As I say, and I was personally involved in many such cases, they accepted the decisions even if they didn't always win because they felt like it was a fair hearing.

Mr. Michael Prue: Because they'd been heard.

Ms. Theresa McClenaghan: Yes.

Mr. Michael Prue: Is it a retrograde step that happened a number of years ago to take away that funding, and should it be brought back?

Ms. Theresa McClenaghan: Yes, we think it should be brought back. We've advocated for that continuously ever since and to expand it to additional tribunals. We could enumerate many, many situations where the decision-making was far better because people had access to proper expertise and the issues were narrowed. I have to say at that time that the boards in general were all very good at narrowing the issues so that the time was spent on the things that were really in contention.

Mr. Michael Prue: I asked the chair this morning about intervenor funding and whether things worked better or not, and in the end she took a very—I don't know how to describe it. She opted not to answer the question. You have pretty well point blank, though, said that the system would work better.

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Ms. Theresa McClenaghan: Oh, yes, absolutely. The one example we have today that's analogous still is the Ontario Energy Board. Parties may be granted standing there, and if they are representing matters in the public interest as opposed to private interest, then their expert and legal fees are covered. That provides for very ample and fulsome participation in that process and it works very well. It's very well controlled in terms of those cost awards.

Mr. Michael Prue: Now, there are some who might argue that this costs the public a lot of money and that the public ought not to be paying.

Ms. Theresa McClenaghan: It's a question of where you would put the payment. Under the Intervenor Funding Project Act, payment was actually required by the proponent of the project, so if it was a transmission line or a waste facility. Of course, that means it was internalized as part of the cost of developing the project and the general community that benefited indirectly through their rates would have supported that. Very fair, because the community that is intervening is generally the most directly impacted community in the immediate vicinity. Otherwise, we're asking those communities to take the brunt of the negative impacts of these projects without an opportunity to properly participate in how the decision is being made and whether their actual valid concerns are being taken into account technically.

Mr. Michael Prue: Thank you very much.

The Chair (Mrs. Julia Munro): Thank you very much for coming here today. That concludes the time we have.

BUILDING INDUSTRY AND LAND
DEVELOPMENT ASSOCIATION
ONTARIO HOME BUILDERS'
ASSOCIATION

The Chair (Mrs. Julia Munro): I'd like now to ask Leith Moore, the chair of the Building Industry and Land Development Association, as well as Frank Giannone of the Ontario Home Builders' Association, to please come forward and make yourselves comfortable. I'd ask, for

the purposes of Hansard, that you introduce yourselves. You may begin.

Mr. James Bazely: Thank you. Ms. Chair, members of the committee, good afternoon. My name is James Bazely. I'm sitting in for Frank Giannone. I am the incoming president of the Ontario Home Builders' Association. I have also served as president of the Greater Barrie Home Builders Association and I've been involved in the residential construction industry for more than two decades.

Joining me is my colleague Paul Golini, first vice-chair of the Building Industry and Land Development Association and the executive vice-president of Empire Communities, which has built thousands of homes and condos across the GTA. Paul and I are both volunteer members of our association. To support us in today's presentation, we are joined by Michael Collins-Williams, director of policy at the Ontario Home Builders' Association, and Joe Vaccaro, who was sitting beside me here a minute ago, vice-president of policy and government relations at BILD. We will all be participating in this presentation.

Let me begin by thanking you for today's opportunity and by telling you a little bit about our associations. The Ontario Home Builders' Association, OHBA, is the voice of the residential construction industry and includes 4,200 member companies organized into 29 local associations across the province. The largest local association is the Building Industry and Land Development Association, BILD, representing home builders and developers across the GTA. Our industry contributed approximately \$37.8 billion to the province's economy last year and generated 365,000 person years of employment.

We would appreciate your consideration to our views on the operation of the Ontario Municipal Board.

At this point, I would ask Paul Golini to say a few words. Paul.

Mr. Paul Golini: Thank you, James.

What I would like to do is simply provide the context for why the OMB is an essential piece of a larger planning regime in the development approvals process.

As a developer/builder looking to make a significant investment in capital and time to bring a project forward, it is important for the committee members to appreciate the extensive due diligence we work through before moving an application forward to any municipality for consideration.

Beyond reviewing the existing and historical zoning, and considering recent development approvals, as a developer/builder we must consider the proposed application in the context of the municipal official plans, transportation investment plans, water and waste water capacity, the provincial policy statement, the Places to Grow Act and all locally applicable federal, provincial and municipal legislation, regulations, bylaws and additional master plans or study requirements that govern the potential development, as well as the principles of good planning. Essentially, before I make an investment to bring a development to market, I do my homework.

Now again I speak to the committee from my business experience and from what I have observed as an industry standard among my peers. Simply put, we cannot afford to move applications forward for municipal approval if we have not done our homework and checked off the application against the extensive and robust planning regime that exists in Ontario.

I present this information to the committee so as to provide a more complete understanding of the process that the applicant must undertake before any consideration to appeal to the OMB can be considered. The OMB is part of the planning process, but it is not where any development applicant starts. It is, unfortunately, where it sometimes ends.

With that, I'd like to turn it over to James.

Mr. James Bazely: I would like to echo Paul's comments and add my experience.

An issue related to the role of the OMB in the planning process that is near and dear to my heart is Simcoe county and Lake Simcoe. As the past president of the Greater Barrie Home Builders' Association, a member of the Lake Simcoe Stakeholder Advisory Committee and a resident of Barrie, I can certainly attest to the fact that there has been a tremendous amount of planning work conducted in this area of the province over the past few years.

Our association was generally supportive of the scientifically based approach and strategy to reduce phosphorus levels in the Lake Simcoe watershed through the Lake Simcoe protection plan, and we are also supportive of the role the province has played in the Barrie-Innisfil boundary issue.

The province rightfully sought local solutions to growth management and political disputes between municipalities. But after years of local infighting—enough is enough—the province had to step in to protect the health of the watershed and to ensure that growth could occur in an ecologically sustainable manner over the next few decades.

The OMB has played and likely will continue to play a role to ensure that provincial planning policies in this region of the province are adhered to. If municipalities are unable to make planning decisions that are in conformity with provincial statutes, or in some cases refuse to make any decisions at all, it is incumbent on the province to have a mechanism, such as the OMB, in place to resolve these disputes to ensure that the long-term health and welfare of the province is respected.

I believe that Mike Collins-Williams will present the next portion.

Mr. Michael Collins-Williams: Thank you, James. What Paul and James will both explain, through their extensive experience working through the planning approvals process, is the reality of moving projects forward and the extensive work that needs to be completed prior to filing an application to a municipality. What James also alludes to is the need for the OMB as an independent tribunal to ensure that long-term provincial policies and visions are executed at the local planning level.

It is for these reasons that BILD and OHBA support the principle of a strong role for the OMB to uphold the provincial interests in the planning and development review process in Ontario. The development industry, and for that matter any applicant, including non-profit agencies and social housing providers, need an OMB that is independent and impartial. It must be prepared to make decisions based on the provincial policy statement, provincially approved growth plans, the Planning Act and the merits of the development application itself.

Without a strong and independent OMB, provincial policies and objectives outlined in the new provincial policy statement and the Places to Grow plan for the greater Golden Horseshoe could be compromised and in some cases undermined.

The right of appeal of a municipal council decision, or where no decision has been provided to the OMB, is an important counterbalance to the political sentiments of local councils. It is also important that this venue is available to proponents, neighbours, community associations and interest groups who have all participated in the planning process to ensure that they have an opportunity to raise legitimate concerns with respect to planning issues.

The OMB provides a venue for sober second thought on planning decisions. The benefit of a highly experienced group of experts and expert testimony where relevant will continue to ensure that provincial policy is adhered to within the planning process across Ontario.

The current government has been very active in reviewing and improving, and in some cases consolidating, the provincial planning regime. The greenbelt, Places to Grow, planning reforms, an updated provincial policy statement, the Lake Simcoe Protection Act, the creation of Metrolinx and many more reforms have changed the way that development applications are prepared and the process by which they are approved.

Through these changes, the development industry acknowledges the government's desire to manage growth and preserve what is important to all Ontarians—clean air, clean water and preserved green spaces—while at the same time having to work to accommodate the anticipated growth over the next 25 years.

OHBA has been consistent in our position that while many of these changes serve to manage and accommodate future growth, it is imperative that the provincial government have a mechanism such as the OMB in place to ensure strong provincial oversight of municipal decisions and to ensure that they conform with the legislative framework that has been enhanced over the past few years.

My colleague Joe Vaccaro will say a few words now.

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Mr. Joe Vaccaro: Thank you, Michael, James and Paul. I think that both James and Paul, as volunteer members, and more importantly as developer-builders, have provided the committee with the background and the context of how applications are prepared and the extent of work done prior to submitting an application to a municipality for consideration. What is important to

understand is that once the application is submitted, it goes from being an extensively researched and prepared planning document to a political document, and it is at this point in the process that the local political aspects and concerns potentially begin to undermine the planning and research that support that application.

As a BILD member from Peterborough once told me, every application, regardless of the level of research, consultation with the municipal staff and elected representatives, number of public meetings and the planning merits of the project, comes down to a political vote at council. This is why the OMB is so critical in providing the necessary administrative justice function in the development and approvals process. Ultimately, it serves to depoliticize the application, bringing it back to the provincial policies, municipal documents, required studies, research and the principles of good planning that the proponent has prepared the application to be judged against.

The OMB offers the opportunity to hear third party evidence to ensure that a fair, unbiased, impartial decision is made. Planners, architects, engineers and economists are all part of the brain trust that must be maintained as an integral component of the planning process via the OMB. Hearings allow for debate and comprehensive review of the planning merits of the case that cannot occur at municipal council meetings. This provides considerable value to the public good. The OMB makes planning decisions without the political undertones that are ever present when municipal councils make planning decisions. The reality of municipal planning decisions is that there are occasions when a vocal minority rules or where political deals are made. These situations often lead to planning decisions that deserve reconsideration by an independent third party. This is the role of the OMB.

We recognize that there is the public perception that developers win more often than they lose at the OMB. I think, based on the presentation so far, the reason is self-evident: The developer has done his homework to prepare an application that, at least in their mind, meets the test of good planning. Most developers will only proceed to advance their case and make an appeal to the OMB based on their ability to win the case. Our members typically utilize the advice of legal teams and planning staff to determine the likelihood that the merits of their planning application justify an appeal. Our members aren't known to waste time and money, so if the advice they receive is that their appeal is a long shot, the developer is likely to go back to the drawing board and scrap the plans rather than take a losing case before the OMB.

Unfortunately, the opposite is often true of appeals made by ratepayer associations or individuals that in some cases could be referred to as not-in-my-backyard opposition. They typically base the need for an appeal on a development application on a motion. Their desire to prevent projects from proceeding is in many circumstances at odds with what may be considered good planning policy or at odds with the current provincial

legislative framework and municipal approved official plans. For better or for worse, either these groups don't listen to the careful, good planning advice they're given or they don't gather the proper resources or evidence to launch a credible, sustainable appeal that is based on good public policy. In some circumstances, these groups plunge themselves into an OMB case with little hope of winning.

Just to be clear, there have been a number of high-profile cases where the OMB has ruled against the development applicant. I'm sure many on the committee are aware of the Eastern Avenue employment district decision, where the OMB sided with the city of Toronto in maintaining the city's employment designation. In a case in Mississauga, the OMB supported the city's decision to maintain the zoning as residential low density while the applicant had requested a change to residential high density based on planning research that they had compiled.

But appreciating that the OMB serves to depoliticize an application and get back to the testing of the development proposal against the planning regime, it is clearly why political or emotional arguments against an application do not serve to deny an application. As one vocal critic of the OMB has written: "... over and over, people have complained that the OMB is 'undemocratic' and its members unelected. That, of course, is exactly the point. That's why it can make the decisions it does. In theory, at least, it is above the fray and apolitical. It deals with facts, not emotions." Christopher Hume, *Toronto Star*.

I would note that as the province and cities begin to work through the affordable housing strategy and move social housing and assisted housing projects forward, the OMB will serve to depoliticize these applications, as local opposition to a social or assisted housing project, or even non-profit housing projects, will likely end up at the OMB. And that's even with municipal and provincial support of the projects.

Some of the committee members may be aware of the Habitat for Humanity project in Scarborough. Generally, those working to move these types of housing projects put forward the view that the OMB is a friend of these sorts of applications.

As Paul Dowling of the HomeComing Community Choice Coalition states, "The OMB usually makes the right decision" when these types of projects are opposed by local interests.

This point does speak to the operational aspect of the OMB in its function to provide administrative justice. When an applicant has already worked through the local planning process, provided the necessary background studies and reports, made the arguments and presented to staff and local representatives the rationale for the application, held public information and community meetings, and in many cases made adjustments and modifications to the original plans and designs to improve the application, only to have the application denied on the basis of a perceived political decision, this is when the applicant needs an independent tribunal like the OMB but also

needs administrative justice to be served in a timely manner, as the applicant has already invested considerable time in the process. It is for this reason that BILD and OHBA support the current powers granted to the OMB, including the power to award costs, even when it works against the industry.

James?

Mr. James Bazely: An example of an appeal that was turned down by the OMB that was brought forward by the development industry was when one of the OHBA's 29 local associations, the Waterloo Region Home Builders' Association, appealed the development charges bylaw enacted by the city of Kitchener. The association, representing home builders in the region of Waterloo, felt strongly, and received legal advice, that certain aspects of the development charges bylaw were calculated improperly and were not in conformity with the Development Charges Act.

The OMB, however, ruled in favour of the city of Kitchener and upheld the bylaw, despite the evidence provided by the Waterloo Region Home Builders' Association. Furthermore, the city of Kitchener was awarded a portion of its costs for the hearing itself, on a partial indemnity basis, due to the failure of the association to call such expert witnesses with expertise in the specific development charges issues under discussion and for unduly and unnecessarily prolonging the hearing. This is but one of many examples across Ontario where the development industry—in this case, one of OHBA's local associations—lost an appeal at the OMB.

The decision by the OMB serves notice to all parties to be prepared for the process or be prepared to pay for the process. This should serve to motivate all those looking to appeal to the OMB to prepare the best case, with the appropriate professional support and research necessary.

Again, the OMB serves to depoliticize the application and, in doing so, forces the participants to do their homework. In this way, the administrative justice function should be delivered in a timely way.

Michael?

Mr. Michael Collins-Williams: In terms of additional operational improvements that could be considered by the OMB, we suggest that the OMB should facilitate improved information exchange between all parties and enhance the pre-hearing process to fully scope the issues.

The most significant problem, in our view, with the OMB process is frivolous appeals that are not based on substantive evidence or planning rationale and that only serve to delay projects. For a mere \$125, one can stall the planning and construction cycle by up to three months, just to get to the pre-hearing process. Planning policies are a reflection of the public interest, yet it is the applicant who often stands to defend public policy through the implementation of their development.

Unfortunately, our industry is often the target of NIMBYism that attempts to undermine public policy at the expense of the greater good. We certainly want the

OMB to remain open, transparent and democratic, but steps must be taken to discourage frivolous appeals.

We suggest that the process can be improved to provide greater direction to the front end and pre-hearing process that would adequately scope the issues and, furthermore, encourage a filtering of issues to determine what should and should not be dealt with by the board.

We also suggest that some rationale or information regarding the appeal should be included on the OMB appellant form, with a higher appeal fee to ensure that the appeal is rooted in issues of substance that can be debated and discussed at the board.

We recognize the improvements to the OMB's Web presence as a means to improve information exchange with the public, and the industry supports the establishment of a citizen liaison office.

Again, measures that help the public understand the role of the OMB and the expectations of the OMB if an appeal is filed will serve to improve the process.

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OHBA and BILD also recommend that the method in which costs are assigned could be improved upon. The current system requires one party to make the case and go after the other party for costs. We believe that the board member hearing the case should be given jurisdiction to award costs or a portion of the cost to avoid the perception of the winning party bullying the losing party.

If the appellant is not adequately prepared, does not have expert witnesses or has no evidence and the appeal was clearly made with the intent to delay, then the board member should have jurisdiction to assign costs. We believe this would reduce the overall number of frivolous appeals and encourage all parties to be adequately prepared in advance of the hearing.

In terms of further improvements, it is important that the committee, the provincial government, municipalities and the public understand that the changes implemented through the Planning and Conservation Land Statute Law Amendment Act, Bill 51, have improved the regulatory process and the role of the OMB in that process, but these improvements are going to take time to work their way through the system.

A pre-submission consultation process in combination with new complete application provisions has assisted to streamline the approval process. This puts a greater onus on the front end of the planning process, including requirements for public open houses and meetings to enhance the public consultation process. By getting things right at the beginning of the process, we're going to reduce the need for OMB appeals at the back end of the process.

BILD and OHBA are in support of recent provincial efforts to ensure municipal official plans and zoning bylaws are updated in a timely fashion and brought into conformity with provincial growth plans and the provincial policy statement. These steps, backed by a strong OMB, continue to be crucial to achieving provincial intensification and sustainable development objectives.

We also applaud the government in efforts to improve the quality of OMB decisions by enhancing the experience, qualifications, compensation and training of board members. The province must continue to enhance the OMB by attracting only the highest-quality persons with experience in land use planning to sit as board members. These measures will improve the stature of the OMB and result in better planning decisions across Ontario.

Another growing industry concern is the provincial government's willingness to have municipalities participate in areas that are of clear provincial jurisdiction. We're seeing this growing trend of municipal empowerment and are concerned that, if left unchecked, it will actually undermine the role of the OMB to test applications against provincial planning policy and possibly work against the government's Places to Grow Act and plan.

All stakeholders should give these changes that have recently been implemented time so that they can be accurately reviewed before any new ideas are considered.

Mr. James Bazely: In closing, I would like to reiterate that as the engine that drives the provincial economy, the residential construction industry pours billions of dollars into municipal, provincial and federal coffers. OHBA and BILD members wish to continue building a clean, green and prosperous Ontario.

To maintain a high quality of life and economic prosperity, BILD and the OHBA support a strong role for the Ontario Municipal Board to depoliticize the development application and uphold the good planning principles set out in the provincial policy statement, the Places to Grow Act and such.

It is therefore critical that the OMB continue to act as an appellate body to protect against decisions that may not be following provincial or municipal planning policies. Ensuring certainty in the process and creating a regulatory framework that will continue to allow the home building and development industry the opportunity to assist in serving the provincial goals and interests of affordable housing, increased levels of intensification and the creation of dynamic communities should be the objective of the provincial government.

Ms. Chair, members of committee, I would like to thank you for your attention and interest in our presentation, and we look forward to hearing any comments or questions that you may have. Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. You've left, I think, each member one question, and we'll begin with Ms. MacLeod.

Ms. Lisa MacLeod: Thank you, Mr. Bazely. I appreciate you folks coming in today for a very important issue that affects your business community.

Very quickly, you mentioned that it should be a sober second thought. Every time I think of sober second thought, I think of the Senate, and in no way, shape or form have I ever seen the unelected senators overturn anything in the House of Commons. So I would caution you when you're using that for what it says to people.

I do have a quick question for you about red tape and all sorts of things. With all these layers of legislation,

whether it's the green belt, the Places to Grow Act, the Lake Simcoe protection plan or the Planning Act, is development significantly more complex? And when you're looking at that legislation, it's important for the people I represent, as well as the municipalities I represent, to understand and for you to know which one trumps the others. Is there a lot of overlap or duplication? What piece of legislation that you would come up against trumps the other? I think that is a significant challenge for our municipalities, but also for the ratepayers' groups and the community associations.

Mr. Joe Vaccaro: I would say, speaking on behalf of the association and speaking to our members, that complexity has truly, truly taken over in the industry in terms of red tape and working their way through the process. I think in our presentation, we did identify a number of pieces of legislation and acts that every application needs to work its way through. Part of that process, we have come to realize, is that, from the development perspective, the industry spends a lot of time meeting and educating ratepayers and planning officials in terms of how all these things cross over.

It's important that local municipalities have priorities, but it's also important that local municipalities take on the responsibility of moving forward and modernizing some of their own pieces of legislation and their bylaws. We are facing some municipalities with zoning decisions and bylaw decisions that were made 30 or 40 years ago. In the current environment, it's incumbent on them to move that process forward and to, in this case, consolidate those decisions to match the current provincial framework.

Ms. Lisa MacLeod: Will the HST make your work that much more complex?

Mr. Joe Vaccaro: The HST essentially is going to create—it's a sales environment that we have to concern ourselves with now. The government did make a significant improvement on the HST for this industry, but having said that, it's still going to be a new tax and it's still something that our members are going to have to deal with. They're going to deal with that, in a way, in terms of how they prepare their performance for their projects, because ultimately, it has to be financially viable to move forward.

Ms. Lisa MacLeod: Will there be white boxes, as has been suggested in the newspapers?

Mr. Joe Vaccaro: There are multiple options that builders will consider, depending on how the market responds.

Ms. Lisa MacLeod: My colleague would like to ask a quick question.

Mr. Frank Klees: Just very quickly.

Mr. Michael Prue: This is four.

The Chair (Mrs. Julia Munro): I know, I know. I'll cut them off the next time around.

Yes?

Mr. Frank Klees: With all of this process, the approvals process, could you just give me a sense of what percentage of the final product—the cost of the average

family's living unit in this province—is attributable to the approvals process?

Mr. Joe Vaccaro: CMHC did a recent study and they determined that in the greater Toronto area, anywhere between \$80,000 and \$100,000 of every unit can be applied to either government levies, taxes, charges or red tape, if you will. In some cases, you're looking at almost 25% of the purchase of that new unit, whether it be condo, single-family home or what have you, is going to be related back to some sort of government-imposed charge, levy or process that our members have to work their way through.

Mr. Frank Klees: So the next time someone suggests that we don't have affordable housing in this province, all five fingers point to where?

Mr. Joe Vaccaro: Well, I think the reality is that all levels of government have to recognize that they are a significant piece of that price. They have to recognize that process and time in process is part of that price. That's why the OMB, as an administrative tribunal, if you will, providing administrative justice, is so important. Because once our members have invested that much time and energy in the process, they need a resolution to move forward on. That's why they turn to the OMB, in some cases.

The Chair (Mrs. Julia Munro): Thank you. Mr. Prue.

Mr. Michael Prue: You used a word to describe the OMB; you described it as "democratic." In my nearly 22 years in government, I've never heard them described as democratic. This is a non-elected body that overturns the decisions of elected bodies and is accountable to no one. Can you tell me why you called it "democratic"?

Mr. Michael Collins-Williams: They are a part of the process. The local councils, which are democratically elected, are also bound by provincial statutes, provincial legislation, from this level, Queen's Park, which is also democratically elected. The important part of the OMB in the process is to ensure that local decisions are following official plans, secondary plans, be it the greenbelt or the growth plan. There's a level of policy that's set by the decision-makers, which are democratically elected. It's important that those policies are adhered to, and that's the role that the OMB plays in this.

Mr. Michael Prue: So they enforce democracy.

Mr. Michael Collins-Williams: They enforce—

Mr. Michael Prue: Okay. You talked—and I'm not surprised. The development industry tends to like the OMB; this is not a surprise to anyone in this room. But every other province has either done away with their municipal board or has reduced it significantly. It has almost no significance in six provinces, and it's been abolished in Quebec and British Columbia. We're the last one. Why do you think it's so important for Ontario to keep this vestige of the past?

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Mr. Joe Vaccaro: I would respond in this way: Considering where government has gone—not just this government but previous governments—on the issues of

smart growth, Places to Grow, intensification, massive transportation investment, there's going to be a greater role for the OMB to play in terms of making sure that development communities that are developed around those investments are consistent with those larger public planning principles. So I think that the role of the OMB in this province, compared to other provinces where maybe they haven't taken those steps, they haven't moved the Places to Grow piece of legislation and really managed growth the way this province has, is going to be even more important as we move forward.

It's going to be interesting to see, as we move forward with things like Transit City and Metrolinx, as those communities and transportation corridors are created, whether or not the sorts of intensity and density will be supported by local ratepayers and local council. We're making massive investments in this province, and now we need the development around those investments to be consistent with the larger plan.

What I would say is that other provinces are not taking on this responsibility the way Ontario has, specifically with this government. The reality is that the OMB will have a greater role, I think, moving forward as they try to link those pieces together, optimize the investment made by the taxpayer in those transportation systems and really try to manage growth in a way that can take full advantage of the things we're trying to preserve, like the greenbelt and green spaces.

I think that the role of the OMB in this province is going to become much more important as we move on, and other provinces, I would say from a planning perspective—a provincial oversight perspective—are probably behind us.

Mr. Michael Prue: But municipalities are all further ahead elsewhere. Thank you.

The Chair (Mrs. Julia Munro): Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you, Madam Chair. I will adhere to your orders of one question. Thank you very much for being here today. I have I guess a comment more than a question: In general you tend to agree with the OMB process, although you made some recommendations, and thank you for that. There's always room for improvement. Nothing's perfect. Having said that, though, as developers or builders, OMB is the last thing you'd want to be faced with, I'm sure, from both sides. Can you give me some sense, in a very short time as the Chair told us, of what things you try to do before you actually try to hit that OMB button?

Mr. Joe Vaccaro: I'm going to have Paul speak to that.

Mr. Paul Golini: Basically, going back to some of the points I made, we go through a very rigorous due diligence process. Even before we purchase a property, we need to make sure that financially it makes sense. We run our pro forma to the point where we're not about to risk millions of dollars if it doesn't make sense from a development and planning process point of view. The due diligence can take upwards of months, and we're working with engineers, consultants and planners, obviously,

not to mention the fact that as developers we engage the community with respect to what we're planning to build and develop. We're talking to ratepayers early on. This is not an afterthought. Despite some of the perceptions out there with respect to the development industry, we're not out there to shove anything down a ratepayer's throat. We're there to work with the ratepayers and with the communities we develop in, and so we're sitting down early on in the process to make sure that what we're proposing makes sense, not only from a planning perspective but from a community perspective.

When we go through that arduous, costly process of bringing together the physical as well as the community and financial, I guess, push and pull and constraints of making a new development and a new community work, we're not going into it looking forward to ending up at the OMB at the end of the process. But we're glad that that democratic process still exists because—not to cite an example, but we go into an area where we're proposing maybe 400 or 500 units. It's an area in one of the municipalities, obviously, where we're proposing two or three high-rise buildings. It's an area desperately in need of revitalization. GO Transit is a block away. We come back, we have a deal, we work with the community, we work with the planners, everybody's on board, and then we go to council and they come back to us with 12 units. Then we end up having to go to the OMB, only to get the 300 units that we could have easily negotiated and that made perfect sense for the community from the outset. Sometimes, obviously, it's our last resort, but we don't plan to go to the OMB. We plan to propose intelligent and smart communities.

Mr. Lou Rinaldi: Thank you.

Mr. Joe Vaccaro: If I can just add to that: Under the new legislation there is a requirement for preconsultation before applications even go to city council. Most builders and developers understand they don't want to end up at the OMB. They will be proactive, meet with local council and speak to local council. Local council will identify those ratepayers who should be met with for discussion. There is a preconsultation requirement as part of the new provincial legislation. The reality is that builders want to work their way through the process as quickly and painlessly as possible, so they're going to go out and engage the community and get a sense of what is acceptable and what is not acceptable. But at the same time they are going to apply good planning principles to the project that's coming forward. That, ultimately, is where you get into conflict and then unfortunately, ultimately where our members face the reality of a planning document becoming a political document as it moves to council.

The Chair (Mrs. Julia Munro): Thank you very much, gentlemen. We appreciate your being here today.

WEST MANOTICK COMMUNITY ASSOCIATION

The Chair (Mrs. Julia Munro): I'd now like to call on Brian Tansley, the president of West Manotick

Community Association. Good afternoon and welcome to the committee, Mr. Tansley. You will have observed you have 30 minutes, and any time remaining from your remarks will be divided amongst the committee members here.

Mr. Brian Tansley: Thank you. Madam Chair, ladies and gentlemen of the standing committee, my name is Brian Tansley, and I'm president of the West Manotick Community Association. On behalf of its members, I thank you for the invitation to speak to you regarding the OMB. My comments are mainly informed by my recent experience with an OMB hearing in our village. Later, I'll use this hearing as a case study to illuminate some of the points I wish to make to you today.

Ladies and gentlemen, if you speak with those concerned with development or read around the topic in the print media, the community association blogs and the many websites of municipal politicians across this province, you will soon be led to conclude that there is something amiss in Ontario's land use planning process.

What's wrong is that a small government agency of 26 unelected and unaccountable appointees circumvent the will of the citizens of the province through their elected municipal councils by acting as the primary decision-makers in Ontario's land use planning matters, and this is the Ontario Municipal Board.

The OMB is an old story in Ontario. It's been at this in one form or another for over a century. While it has never been easier to become informed on planning principles, never easier to communicate with and participate in the activities of community planning, the frustration and cynicism that falls from dealings with the OMB creates a disengagement in Ontario's public. People feel as though they have been taken out of the planning process due to the intervention of the board. Calls for the abolition of the OMB are found in the op-ed pieces of local community newspapers and large city dailies. You can hear the call in municipal council chambers across our province, from the smallest settlement areas to the largest, only a few blocks from where we are now.

I accepted the invitation to speak to you today not to argue for the abolition of the OMB but to call for changes to its mandate and other aspects of the province's planning process that I believe will go a long way to elevating meaningful public input and decision-making to its rightful place in Ontario land use planning.

OMB reform was contemplated by the present government before it became the present government. The wording of section 2.1 of Bill 51, introduced over the authorship of the then Minister of Municipal Affairs and Housing, the Honourable John Gerretsen, appears to have fallen short of what is needed to set things right in the world of Ontario land use planning.

Recent OMB rulings suggest that the phrase "shall have regard to" needs legal interpretation and stiffening. This is the basis, in fact, of a judicial decision to grant leave to the city of Ottawa to appeal the Manotick OMB ruling before the Divisional Court of Ontario.

However, my experiences convince me that there is more to this problem. I'll try to articulate its breadth

using as a case study our community association's recent participation in an OMB hearing affecting our village. Finally, I'll offer some positive recommendations intended to correct the shortcomings that I identify.

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The OMB mediates and rules on planning disputes. Critics have the perception that the OMB has a pro-developer bias. This perception is bolstered by a large number of well-publicized rulings that overrode the decisions of elected municipal officials and councils in favour of large-scale developments. Cynics view the OMB's purpose as to provide the development industry a portage at the whitewater of public concern.

This perception of bias has an important consequence for our democratic way of life, one that is at the heart of my concerns here today. It infects the public with a cynicism that results in the attenuation of public participation in the affairs of planning. Should this extend to its logical conclusion, the role of the public and its elected officials will disappear from the planning process altogether, save for the ongoing requirement to bear its costs through municipal taxation.

There are those who argue that this might be a good thing. I've heard both developers and city planners offer the opinion that municipal councils, not knowing much about planning, are inefficient arbiters in the process and should have no say in it. Efficiencies aside, I'm troubled by such talk, as it disenfranchises those who want to participate in the process by disconnecting their elected representatives from the ability to make planning decisions.

I'll now briefly describe the experience of our community association as a party to an OMB hearing. This is a case study that underscores the points I want to make to you today. I know that each of you can find similar examples in your own constituencies. Indeed, I've read accounts of examples so similar to ours that the wording could have been pasted from our own community association website.

Our community had a recent battle, culminating in an OMB hearing, to oppose a large local developer who proposed a 1,400-unit suburban-style subdivision within the village boundary. In order to accomplish this, the developer submitted an application to the city of Ottawa to amend Manotick's secondary plan, which in its present form does not permit development of the type and at the scale and pace that they seek.

To say that the developer's plan required an amendment to Manotick's secondary plan is inaccurate. They required such a wholesale rewriting of the plan that those who read the two documents wouldn't recognize one as an amendment of the other. All of the work the community put into creating the plan was overwritten with wording that the community clearly understood shifted the focus of this plan away from the public good to the developer's business interests.

Wanting to air issues in a public forum, our village community associations organized a town hall meeting to discuss the implications of the proposal. Nearly 1,800

people packed themselves into the village arena. All showed up as an expression of concern and to hear the issues discussed by invited speakers. Many asked questions and weighed in with their concerns regarding the defence of Manotick's secondary plan in the question and answer session that followed.

Once the details of the proposal and the issues that surrounded them found their way into the village's collective consciousness, the community was galvanized in opposition. Not opposition to developers or development, but opposition to the process that allowed such a radical modification of Manotick's secondary plan, a principled plan that charts the way that our historic rural village should grow into the future; a plan that was created by its citizenry for its citizenry; a plan that the residents of the village feel belongs to them. In two separate surveys of village residents, over 95% supported the community association in its efforts to represent their concerns before city council.

Our community association worked to convince Ottawa's city council that Manotick's secondary plan represented good planning, both from the perspective of our village and from the perspective of the provincial policy statement of 2005. Time after time, we detailed before council and committee how the developer's proposal would create stresses in the character and quality of life of the village, out of keeping with the primary objectives of the Manotick secondary plan. We lobbied each of the city's 23 councillors, as well as the new mayor, with personal delegations attending at their offices. We publicized our concerns at meeting after meeting of city council committees, through countless flyers, brochures and presentations to the members of our village and our city. Our efforts succeeded. Ottawa city council vetoed the developer's amendment proposal by an unequivocal vote of 19 to 5.

Within a week following the council's refusal, the developer announced its intention to appeal the city's decision to the Ontario Municipal Board. We all wondered how the board could contemplate allowing such radical changes to our secondary plan.

If you read Manotick's secondary plan, you'll be impressed with its wording. Written and adopted by majority votes of three separate municipal councils—the Rideau township in 2000, the regional municipality of Ottawa-Carleton in 2001 and the amalgamated city of Ottawa in 2000—it predated the provincial policy statement of 2005, and yet many of its precepts read as if they were taken from the PPS:

—Continue developing in areas where existing development is already located or where public services already exist rather than developing in new areas.

—Discourage growth in natural areas like wetlands and flood plains.

—Capitalize on, but do not harm, natural amenities like rivers and forests.

—Provide for source water protection.

—Plan for multifamily developments in parts of the village where streets and sidewalks can handle the increased traffic.

—Design neighbourhoods within walking distance of civic spaces and commercial uses and jobs.

—Avoid development in areas that cannot easily be serviced with utilities.

—Promote efficient use of existing infrastructure through the revitalization and intensification of the village core before venturing into greenfields.

—Control the rate of growth so as to allow both physical and social infrastructure to keep pace with the addition of new residents etc.

We thought, “How could such a plan, one that conforms so well to the new provincial policy, be subjected to an amendment that would alter it so completely?” Allowing the amendment would result in more than a doubling of the village’s population within the next decade, at an annual growth rate five times that of the village’s growth rate over the past 30 years.

Manotick’s residents would face the prospect of clogged streets, snarling traffic and lost opportunities for intensification and revitalization of the village’s residential and commercial core. The expected increases in the demands on the social, recreational and commercial infrastructure would overwhelm the character and quality of life of a village, ironically, celebrating its 150th anniversary. Big-box developers started sniffing around at the edges of the village, worrying its merchants.

All of this not because Manotick’s secondary plan failed to conform with provincial policy, but because a developer had different ideas from those of the village’s citizenry as to how the village would grow into the future. All of this in spite of the fact that the present residential land inventory in Ottawa is sufficient to supply the projected housing needs of the rural areas of the entire city for the next 30 years. All of this, though the development would necessitate the extension of city-centred services, increasing sprawl and with it the city’s financial burden, stressing its ability to provide and maintain infrastructure, such as roads and emergency services.

After much discussion and consultation with the community, the WMCA board decided to seek party status before the OMB hearing on the developer’s appeal.

Information from community associations right across the province confirmed my suspicions: Our community association would be in for an expensive and time-consuming fall and winter of 2008-09.

We learned a lot about the process in a short time. For example, to our naive surprise, we learned how difficult it is to convince local planners and engineers to serve as expert witnesses on our behalf before the OMB. Many were candid, simply stating that they received a significant amount of income from the development industry, including the appellant in this case, and that although they were very sympathetic to our cause, the financial penalty imposed by the developer for supporting us in terms of lost work would be too much for them to bear.

We learned how to navigate through the bureaucracy of Ottawa city hall. It was daunting that the developer’s staff knew everybody at city hall, from the janitor to the

mayor, by their first name. What I would have given for the directory in one of their BlackBerrys. It took us months to accumulate a list of the useful phone numbers and even longer to connect the dots so that we knew who to call and for what purpose.

To our dismay, we learned that, in Ontario, the business of modifying official plans is tax deductible, whereas the business of providing public input to creating and defending them is not. For those in our community who supported the cause financially and to those who attended the seven-week-long hearing, many taking unpaid days off work to do so, it was galling to find yourself beside the developer’s lawyers, employees and expert witnesses, all fully paid to be there by the developer and all fully deductible as pre-tax business expenses, right down to the cost of their parking, while all of ours were being paid for in after-tax dollars.

We also learned how few resources the OMB actually provided to deal with a case of this size. For example, there was no court reporter, no video or audio recording apparatus, no independent method of verifying testimony. The lone board member presiding over the hearing had to keep his own notes in addition to following the testimony and the ebb and flow of the proceedings, the hours of sworn testimony, opinion, flipcharts, posters, photographs, calculations and documentation sets that would take down a small forest to print. He seemed overwhelmed at times, showing more interest in the more concrete aspects of the appeal than in the many good but more abstract planning principles that the amendment offended.

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We reminded ourselves that the community association was a party to the hearing to argue for the defence of our secondary plan. Professional planning consultants, economists, engineers and lawyers had been involved in its creation, as had many of the community’s residents, and we were convinced that the MSP remained as the best prescription for the village’s future and fully consistent with provincial policy. Surely the board would find a middle ground to serve all concerned. We retained our resolve to resist amending it solely for the purposes of the developer’s business plan.

In the end, ladies and gentlemen, our exercise in planning arbitration, Ontario style, cost the community association nearly \$180,000 in after-tax money, not counting the uncountable and priceless after-tax volunteer labour hours. In the process, we’d participated in nearly 70 meetings relating to the issues before the board. We engaged not one, but three lawyers with municipal expertise, along with consultants and experts in rural planning matters and in traffic engineering.

It beggars the imagination as to how much more any community could have done in defence of its own secondary plan. Even people on the developer’s own staff grudgingly admitted that they had never encountered anything like the level of effort that was expended by the WMCA over a local planning issue. My guess is that they’re right. If things don’t change to make it possible

for meaningful public input without the level of effort that we expended, my guess is that they never will again. Not many communities have the resources of Manotick, human or financial, but even so, the sheer weight of the thing can be borne by any community volunteer only about once in a lifetime.

Some months later, the OMB ruling appeared. It favoured the developer's position over the city's and the community association's on every point. Incredulous, I pored over the pages of the ruling to try to understand where we had gone wrong. What I read offered no reference to precedent or law or planning principles. The development's amendment details were simply asserted to be good planning, and that was that. If the board was sending us a message, I heard it loud and clear: Leave the public out of the planning process and leave it up to the developers and the planning professionals, who know best.

Throughout the Manotick hearing, issues were addressed in the context of the developer's amendment application, comparing it to the village's existing secondary plan. In the ruling, however, the OMB seemed to have viewed the developer's amendment to Manotick's secondary plan as an original planning document unto itself, as if it hadn't been deliberated upon by municipal council in the context of our existing secondary plan. In effect, the OMB member had no regard to the decision-making activity of the elected representatives of our city and our community. The OMB acted as the primary decision-maker in this matter and not as an appeal board at all.

As it's currently constituted, the OMB has the authority to overturn decisions of city council as long as it claims to have had regard to their decision. In the Manotick OMB ruling, it states in a sentence near the very end of the document that the board did have regard to council's decision. The OMB's regard, however, did not extend to giving it serious weight.

In this case, it's not only a lesson to the taxpayer, but a cautionary tale that every elected public official in this province should heed. If this situation is allowed to continue, I suspect that the taxpayer will react first by vacating the process of contributing public input to planning, followed by a more general vacation from involvement in the governance of our province altogether.

I think it's appropriate to ask of you at this place today, in this case, what more could have been done to defend an official plan? If this level of effort cannot provide an adequate defence, what can? What is the value of public input into the planning process if there's no deference to the community's wishes and careful planning work and no regard to the decisions of its elected officials? And finally, why should the public spend time involving itself in a planning exercise, only to be subjected to such treatment? Would you? We need your help to right this situation.

In conclusion, I believe land use planning belongs firmly in the public domain as a public process controlled by accountable, elected officials. Meaningful public input

into the planning process is only possible where the elected representatives of the people are the primary decision-makers in planning. This is not the case in Ontario today.

In Ottawa, a big-box developer has recently bypassed the public consultation process altogether and appealed directly to the Ontario Municipal Board in advance of a vote of council or municipal committee. If the board decides to, it can apparently rule on the appeal *de novo*, without a prior decision by council. Neither the developer nor the OMB should be allowed to do an end run around the public consultation process in this way.

Manotick's case is a microcosm of what the OMB has visited upon communities all across Ontario who face off against development pressures. The OMB has now elevated itself to the role of primary decision-maker and has assumed the power to override decisions made by municipal councils. This does not serve the public good, and it is, in my view, antithetic to the fundamental purpose of government. It should be changed.

I believe that correction can be achieved by limiting the board to the role of an appeal body, with the power to overturn council decisions only if they are illegal; that is to say, if they do not conform to the provincial policy. This limit to power needn't be seen as a reduction in the importance of their role in Ontario planning. To the extent that the OMB is able to determine whether or not a given piece of planning conforms to the PPS, its expertise could be valuable as part of the creation and review of municipal official plans. OPs created in public and shown to conform to the PPS through a review by the OMB would be stronger planning documents and less subject to costly amendment reviews.

I would further recommend that serious consideration be given to the role that the community associations play in planning matters. In my view, they're a valuable but underutilized resource in matters of local planning. Communities often find themselves placed in an adversarial position against either their municipal council or the developer as a result of Ontario's present land use planning process. It needn't be that way.

Co-operative models must be found that will also elevate the opinions brought forward by communities through their community associations. Finding ways to finance their participation in planning deliberations would also be worthwhile. A form of community association legal aid for planning might be considered, along with an ombudsperson to assist community associations in their dealings with planning matters.

An amendment to the Planning Act effecting changes to the mandate of the OMB may not require the creation of new law and might well be implemented retroactively so as to apply to the point in time when Mr. Gerretsen's bill received royal assent; I don't know. Whatever way such a change is effected, the primary purpose and goal must be to return the power and responsibility for land use planning back to where it rightly belongs in our democratic society—with the people and their accountable, elected representatives.

Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. I think we have time for one question each. We'll start with Mr. Prue.

Mr. Michael Prue: I just have one question. It cost you \$180,000. Are there still outstanding monies? And where is the town going to go from here?

Mr. Brian Tansley: The answer to your first question is no. It's paid for. Thank the Lord.

The village's role in carrying this issue forward at this point is over. The city of Ottawa sought leave to appeal and received it before the Divisional Court, and that's pending at the moment.

The Chair (Mrs. Julia Munro): Thank you. Mr. Rinaldi?

Mr. Lou Rinaldi: Thank you very much, Madam Chair. I just ask for the indulgence of a very short question, but then I do have a real question.

Thank you very much, Mr. Tansley, for being here today. The question is: You were involved in a Minto development case on a hearing. If that's the case, were you involved in the other previous board hearings with other groups?

Mr. Brian Tansley: This is the hearing I'm referring to.

Mr. Lou Rinaldi: I realize that, but were you involved in the other hearings with the OMB in the past?

Mr. Brian Tansley: No.

Mr. Lou Rinaldi: No. Thank you.

My other question is, briefly: OMB are frequently asked to bring forward different—to adjudicate. Depending on what side you're on—and this is a question I had before—there's a winner and a loser. The important part of that during the adjudication is making sure people get fair access to representation. Was your group access to fair representation—how would you characterize that? I guess my point is, did you have access to the board?

Mr. Brian Tansley: I don't understand what you mean by access to the board.

Mr. Lou Rinaldi: I mean, were—

Mr. Brian Tansley: They responded to our e-mails, yes.

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Mr. Lou Rinaldi: Were you able to make a presentation to the board, to the hearings?

Mr. Brian Tansley: No. The board refused to even visit the village.

Mr. Lou Rinaldi: But you were able to give input, correct?

Mr. Brian Tansley: We sought party status and received it at the hearing. That's why we spent \$180,000.

Mr. Lou Rinaldi: Okay, so you did have status then.

Mr. Brian Tansley: We had three lawyers. We had two expert witnesses. We had 25 participants and residents from the village speak.

Mr. Lou Rinaldi: So you did have status? I guess that's the point I'm trying to make.

Mr. Brian Tansley: Yes. That's our legal right.

Mr. Lou Rinaldi: Thank you.

The Chair (Mrs. Julia Munro): Ms. MacLeod.

Ms. Lisa MacLeod: Thank you, Mr. Tansley, for making it all the way up here from Ottawa today. I just wanted to reiterate: In your deputation, you were very clear that you were not opposed to developers or development, but you did oppose the process. I guess I take exception to Mr. Rinaldi's line of questioning. What difference does it make if it's your first or your 15th time before the OMB, if the process isn't easily accessible to citizens? I guess we have a job to do here.

I want to just thank you very much for that. Again, I know it's been an interesting time in Manotick, especially on our 150th birthday. I just wanted you to have an opportunity to provide us with any parting comments on this, in particular your view on the weighting of municipalities at the OMB.

Mr. Brian Tansley: I appreciate the opportunity and I thank you very much for it.

Ms. Lisa MacLeod: Okay, so that's—

The Chair (Mrs. Julia Munro): Thank you very much, Mr. Tansley. That completes our time. We appreciate you coming.

ENVIRONMENTAL DEFENCE CANADA

ONTARIO GREENBELT ALLIANCE

The Chair (Mrs. Julia Munro): I would now like to call on Rick Smith, the executive director, and David Donnelly, the legal counsel for Environmental Defence Canada/Ontario Greenbelt Alliance. Welcome, gentlemen, to the standing committee this afternoon.

Dr. Rick Smith: Thank you, Madam Chair.

The Chair (Mrs. Julia Munro): As you know, you have 30 minutes in which to make a presentation. Any time remaining, we will entertain questions from the committee members. For the purposes of Hansard, I need you to introduce yourselves.

Dr. Rick Smith: My name is Rick Smith. I'm executive director of Environmental Defence.

Mr. David Donnelly: David Donnelly, counsel to Environmental Defence.

Dr. Rick Smith: We very much appreciate the chance to chat with the committee today. We're very grateful that you're undertaking this important discussion and we understand that your committee is empowered to make recommendations with a view to reducing possible redundancy and overlapping, improving the accountability of agencies, rationalizing the functions of agencies, identifying those agencies or parts of agencies which could be subject to sunset provisions, and revising the mandates of roles of agencies.

We're here today to recommend to you in light of this important mandate that the government of Ontario either needs to radically alter the rules and operations of the Ontario Municipal Board or to abolish it entirely.

We make these recommendations for significant change or abolition out of our very significant personal experience trying to work at the OMB, trying to represent citizens at the OMB, trying to do right by Ontario's environment at the OMB.

Since our inception in 1984—this is our 25th anniversary year—Environmental Defence has intervened in or assisted over a dozen citizens' groups appealing development approvals to the OMB. Our organization provided funding and legal counsel to some of the largest environmental appeals in Ontario history, including the very well-known Oak Ridges moraine hearing in Richmond Hill, the North Leslie appeal, the Bradford West Gwillimbury employment area hearing, the OP 198 hearing in Oakville, the Moon Point hearing on Lake Simcoe, and I could go on. Suffice it to say that no other citizens' group in Ontario that we know of has had this length of experience, this depth of experience, trying to work at the OMB.

We have a number of points that we'd like to make today in what we hope is a constructive presentation and useful from your point of view. The first point I'd really like to make is that the cost of bringing a case before the OMB is just simply prohibitive. It is well outside of the means of most citizens' groups at this point in time. It has been growing over the years, and I'll give you a few examples. In the Bayview East landowners appeal, which is also known as the north Leslie hearing, Glenn De Baeremaeker, who is now a city of Toronto councillor, swore an affidavit claiming \$1 million had been expended by taxpayers before the hearing on the merits had been commenced. He estimated that his organization at the time, the Save the Rouge Valley System organization, would require \$250,000 for legal and expert witness fees to attend the hearing. He believed legal and expert fees for the developers ran from \$25,000 to \$50,000 per day of hearings, including preparation time, depending on the witnesses. The hearing was suspended after nearly a year while the north Leslie hearing lasted for months, costing taxpayers millions of dollars.

We concur with his assessment that these costs and the cost of virtually every other public-interest-based OMB proceeding that we know of are outside the scope and the capacity of virtually every Ontarian. The implication of this is quite simple: The advantage goes to well-funded developers in this process, the advantage goes to the self-interested proponent, and this advantage is extreme, it's prejudicial and it's obvious. Our conclusion is that either the OMB needs to introduce intervenor funding or its process must be dramatically streamlined or eliminated.

Related to this first point is a second point I'd like to make before I turn it over to my colleague Mr. Donnelly. The OMB rules on costs, rules 96 through 104, must be reformed, as they allow developers to use the threat of costs or just the threat of being dragged through a costs motion to intimidate the public. Again, this isn't just my imagination; this is something that we've experienced. Environmental Defence and its community partner the Innisfil District Association, a very good, very sincere volunteer ratepayer group in Innisfil, Ontario, opposed the Big Bay Point mega-marina and the resort in Simcoe county, a case that achieved some notoriety, you may recall, a few months ago. This is a big proposal; this is not just a small addition to a garage in somebody's back-

yard. The resort proposal consists of 2,000 hotel and condominium units, a 300-person theatre, 86,000 square feet of commercial space, a 54,000-square-foot conference facility, a 32,000-square-foot recreation centre and a 1,000-slip mega-marina. In fact, I think the only thing this proposal doesn't include is an Elvis chapel where you can go and get married instead of taking a flight to Vegas. This is a big proposal.

Not surprisingly, the neighbourhood group felt inclined to get involved in shaping it and providing their input as it moved forward, as is their right and as they are encouraged to do by the OMB's website, which talks at great length about how the OMB is open to Ontarians. "You don't even need a lawyer to appear at the OMB," so says the OMB website. So this ratepayer group proceeded.

Despite the Innisfil District Association's evidence, the OMB panellists called the loss of 100 acres of forest extremely small and said that digging a 30-acre hole in the shoreline would have "little if any impact either on water quality or fisheries." I think it's worth noting without a doubt that if this proposal were proposed as if new today, there is no way that under the new Lake Simcoe Protection Act, supported by all parties, this thing would go forward. This was essentially a grandfathered proposal. There is no way it would go forward in its current form today.

Coming out of that hearing, because of its sincere engagement at the OMB, the Innisfil District Association was slapped with a \$3.2-million cost application by the developer. The Innisfil District Association's lawyers were personally gone after by the developer's lawyers. After 13 months of proceedings, motions, cross-examinations and a record 17 and a half days of hearings on the cost application alone—almost as long as the original OMB hearing itself—the claim was dismissed in its entirety. Again, you may remember this from the press at the time.

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The cost to the IDA is really, frankly, incalculable. I mean, the monetary cost is substantial, certainly over \$1 million. We intervened in the hearing; Clayton Ruby represented us. We sought leave to intervene in the hearing—we were granted leave by the OMB—because we thought this case was so important in terms of establishing the ability of citizens to operate at the OMB. Our costs were substantial, just as an intervenor, again, because this cost hearing went so long.

The cost to the IDA as a personal toll I think is more important. I mean, this is a group of volunteers, members of the community, moms, dads, grandfathers. These people have better things to do than to be going to a 17-and-a-half-day OMB hearing to make sure that they're not held liable for \$3 million just simply for engaging in the process that the OMB itself encourages Ontarians to engage in. The toll in terms of angst in that community is significant. It continues. As my colleague Mr. Donnelly will outline, there remain a variety of outstanding civil suits by the developer levelled against members of the Innisfil District Association.

Why is this relevant to this current proceeding, why do I bring this up now? Well, because we asked the OMB to please refrain from proceeding with the hearing until such time as this chill from these outstanding civil claims was lifted, so that they felt able to operate at the OMB hearing and felt able to engage with this process. The OMB said, "No, we're going to proceed." So this whole thing proceeded with people, in some cases, being sued, having more than one outstanding lawsuit hanging over their heads, levelled at them by the developer, who then also went after them for \$3.2 million.

This OMB process for costs is Byzantine, it is unfair, it is punitive, and it is having a chilling effect right across the province right now in terms of citizens asking themselves, quite rationally, whether they should engage with this tribunal at all or whether holding onto their house is more important to them than making a point about proper planning or environmental protection in their community.

Maybe I'll turn it over to my colleague to make a few further points.

Mr. David Donnelly: Thank you, Rick.

Just picking up on that last point, this is not an academic matter about whether the chilling effect from Big Bay Point is real or not. The Concerned Residents of Hillsdale were opposed as a party at the OMB to a subdivision from the same corporation, the Geranium Corp., the developer in Big Bay Point. Upon learning in the *Globe and Mail* about the \$3.2-million cost against the IDA and its lawyers, including me personally, Ms. Tanya Mullings, the president of CROH, appeared before the board on the first day of the hearings to withdraw CROH's party status. In doing so, she told the board explicitly that the reason for doing so was a matter of intimidation and a fear of costs. A fear of costs is not an academic matter and must be addressed by this board if the OMB is to continue its claim that it is an open, fair and democratic process.

I'd like to turn the board's attention to several technical matters that affect practising before the Ontario Municipal Board or participating as a citizen group.

It appears that developers and their lawyers are becoming more inventive in finding ways to intimidate or chill participation at the Ontario Municipal Board. Tomorrow, September 9, a citizens' group in Prince Edward county opposing one of the largest development proposals in the county's history will be defending a motion to dismiss based on a developer's claim that the citizens' group, the Friends of East Lake, had not presented their full case to council. Even a plain reading of the Planning Act will tell you that that is not a condition for launching an appeal, but the time and the cost to defend this motion will be substantial and could possibly exhaust the group's resources before a hearing on the merits. The group, the Friends of East Lake, is not unsophisticated: They've hired a Bay Street law firm, planners and biologists who have already begun preparing their case.

The first recommendation that we have is that before developers begin to use this motion-to-dismiss technique,

the Ontario Municipal Board should reform its rules to require a leave of the chair of the board before these motions can be heard.

With respect to rules 94 and 95 with respect to transcripts of proceedings, Councillor De Baeremaeker estimated the costs of transcripts in the North Leslie hearing alone could be as high as \$30,000. At the Bradford West Gwillimbury hearing just conducted, it was our estimate that it would cost over \$1,000 to obtain the transcripts of just a very short, simple matter. The fact of the matter is that transcripts are ordered by developers to provide a very real advantage to them in the case. Otherwise they wouldn't order the transcripts in the first place. But the costs of these transcripts, particularly in lengthy hearings, are simply beyond the means of participants. The rules should state that it's fair for all. If a developer orders the transcript, then the citizens' group should have access to the transcript, should be given the transcript if requested. Otherwise, the playing field is simply not level.

The government of Ontario has on two recent occasions set up citizen groups by conducting secret negotiations while in opposition to development proposals that have in effect stranded citizen groups without proper representation or experts at hearings. I'm referring to both the memorandum of understanding signed in the case of the Big Bay Point mega-marina and in the Bradford West Gwillimbury employment land area. In both those cases, the provincial development facilitator convened meetings behind closed doors and concluded agreements with the developers and with the municipalities in absence of the citizens' groups opposing the developments. But when those deals were revealed and the citizens' group in the case of Big Bay Point asked for an adjournment so that they could then reorganize their case, this adjournment request was denied.

What makes these two cases more troubling is that the province did not call evidence in these cases to justify its reversal of position. Furthermore, staff reports prepared by professional bureaucrats and planners at the Ministry of Municipal Affairs were either not made available or simply were not prepared. This is a very troubling turn of events when developers stand to make hundreds of millions of dollars in these development applications and there is no technical review of the planning merits of that reversal, in one case contravening Places to Grow. In the case of the Bradford West Gwillimbury employment area, three minister's zoning orders are required to make the development application fit with Places to Grow. I'm old enough to recall in 2003 candidate McGuinty running against secret land deals and ministers' zoning orders to perfect these sorts of land exchanges or land development deals with developers.

With respect to rule 92—that's the rule that prohibits the recording of proceedings by the media—the vast majority of hearings take place during the day, when people are at work. Particularly in cases of great public interest or interest to the community, it is unfair that citizens should be deprived of the right of viewing these

proceedings. The Supreme Court of Canada, the Federal Court of Appeal and most other courts and tribunals in our country allow the televising of proceedings if requested by media. I have personally attended when media have attended and asked to film proceedings and been denied by the board. This archaic rule should be overturned.

Hearings must be shortened to be fair. The evidence led by proponents can often last weeks or even months, exhausting even the best-financed groups. I have been with experienced litigators who have sat through this lengthy process. It has boggled their minds that when confronted with a hearing on a development application, these hearings can last weeks, months or even years to complete. Complex billion-dollar litigation is resolved in Canada that routinely requires a matter of days or, in the outside cases, weeks. Yet in hearings that we have participated in—Richmond Hill-OMB, the Big Bay Point marina, the North Leslie hearings—these cases have dragged on for months.

The Supreme Court of Canada and the United States Supreme Court both require time limits on lawyers. In the case of the United States Supreme Court, oral argument is restricted to 30 minutes.

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It bears repeating that the motion for costs, after the hearing on the merits, dragged for 17 and a half days, with the developer's lawyers doing most of the talking at Big Bay Point.

There are rules that can be applied, like they have in civil court across the common law jurisdictions, to prevent evidence dragging on for days and weeks. In the British justice system, you don't lead evidence; the evidence is submitted with witness statements and then it's up to the lawyers to do the cross-examination. This would significantly cut down the time of hearings.

Matters relating to environmental protection should be diverted to the Environmental Review Tribunal to be put before members who have environmental expertise. There is no good reason to deprive that tribunal of its right to hear evidence with respect to groundwater, hydrogeology, species protection—all the things they are familiar with and handle routinely. These matters should not be before the Ontario Municipal Board or they should be combined as consolidated hearings.

Finally, I would be remiss if I did not bring to this committee's attention the awful tragedy of Ontario's treatment of aboriginal cultural heritage resources. It is the law in the province of Ontario that when a development application is submitted to local council, a host of interests are notified of that development application, including school boards, conservation authorities, local ratepayers' groups, even utilities like Rogers Cable and Canada Post. But even in cases where sacred sites or significant cultural heritage sites are located nearby, First Nations are not, or ever, notified of these development decisions.

I'll just quote to you from a letter from the grand chief of the Huron-Wendat Nation. "The Huron-Wendat Nation

was not informed of a single [planning] application to scrape and pave our cultural heritage sites or to take our ancestors and artifacts. Our history of occupation of the north shore of Lake Ontario has been virtually wiped out by development. Almost every day this process is repeated in Ontario, a process that still does not even provide basic notice to us."

The Planning Act as presently constituted is a racist document. It is a horrible artifact and it must be reformed. Our recommendation is that you convene a special session of First Nations' interests so that the scraping and paving of Huron-Wendat and other First Nations sites in Ontario ceases. The first step in stopping this destruction is giving First Nations people the same notice that ratepayers and utilities like Rogers Cable are entitled to under the law.

With that, I'll turn it back over to my friend for a conclusion.

Dr. Rick Smith: Thank you very much. Let me just say again that we appreciate the opportunity to present to you today. As you can tell, we believe there are significant problems with how the OMB operates at present. This is an old institution that needs retooling in a very dramatic way. Ontarians need you to lead that charge. And in the absence of that significant modernization of its rules of procedure, of its ways of operation, our belief is that the OMB should be abolished in its entirety because it's just not serving the best interests of Ontarians at present.

We look forward to any questions you might have.

The Chair (Mrs. Julia Munro): Thank you very much, and again, we're very tight on time but we do have about two minutes per caucus.

Interjection.

The Chair (Mrs. Julia Munro): Sorry for the interruption. We'll turn to the government. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you very much, gentlemen, for being here today. It's always appreciated to receive your good advice.

Question: One of the overtures that you made over and over in your presentation, without going into a lot of detail, is that we need major reform of the OMB or we should ultimately scrap it.

Dr. Rick Smith: Yes.

Mr. Lou Rinaldi: I'd like your opinion. If we scrap it, if we put it through a regular justice system to deal with the issues—because those issues are going to arise. They're not going to go away.

Dr. Rick Smith: Sure.

Mr. Lou Rinaldi: If we scrap the OMB, we're still going to have a for-and-against. How is that going to solve the problem? It's fine to say, "Scrap it," you know? But tell me—

Dr. Rick Smith: Maybe I'll just make a larger point and then turn it over to my colleague. I'm a zoologist, I'm not a lawyer, so I'm going to turn it over to my colleague for some legal points.

In terms of the larger point, this is a 100-year-old institution that was really conceived at a time when

municipalities across this province lacked virtually any capacity to oversee the most rudimentary aspects of their own affairs, right? That is the larger point that needs addressing: Do we still need a quasi-governmental body to do that at a time when even the smallest municipalities across this province in many cases have acquired the capacity to take on a lot of this stuff?

That's what we mean by modernization. We don't think that the sort of guts of this entity that date back to the late 19th century have been looked at adequately in quite a while.

Mr. David Donnelly: Virtually every sophisticated planning jurisdiction in the world does without the OMB just fine. What are the disputes before the Ontario Municipal Board? A developer wants to buy a farm field in the agricultural rate, flip it, work through the \$80,000, \$100,000 a unit in approval process and come out at the end with a serviced acre that's worth 10 times the value for which he bought it. I would estimate that if this committee did a careful review of the cases that go before the board, 90% of them could be solved either with common sense or abiding by the decision of the democratically elected municipal council before which the matter went.

So, are there a small percentage of cases that need to be resolved through adjudication? Yes. The vast majority of them are simply developers working the process to their advantage. There is no coincidence that citizens' groups are opposed to the OMB, don't like it and want it abolished. Developers love it. They think it's a great thing. Most municipalities who have been through the process think it's unnecessary.

Mr. Lou Rinaldi: If I may, just to follow up, Chair. I tend to disagree. I represent a riding with eight municipalities. Four of them have planning fully functioning and none of them have legal departments within their jurisdiction. We heard this morning that it's okay for Toronto, Ottawa and some of the major centres, that they do have that expertise. I'd just leave that with you because you're the expert.

Mr. David Donnelly: But if they don't have a legal department, how can they defend their constituents' interests at the Ontario Municipal Board?

Mr. Lou Rinaldi: I guess what I meant to say is that they don't have planning with legal backup. They'd have to hire somebody, like they could do now.

Mr. David Donnelly: But they have to hire at the Ontario Municipal Board.

Mr. Lou Rinaldi: But they don't have a proper planning department to do this type of expertise. Thank you.

The Chair (Mrs. Julia Munro): We'll move on. Mr. Klees.

Mr. Frank Klees: Thank you, gentlemen. You both have extensive experience. Before the Ontario Municipal Board you worked together in tandem quite often. How many times have you been on the winning side of a decision?

Dr. Rick Smith: That's a good question.

Mr. David Donnelly: I know the answer. It depends on how you define victory. In north Weston, for example—

Mr. Frank Klees: I don't have a lot of time. Not very often, right?

Mr. David Donnelly: No.

Dr. Rick Smith: Not very often.

Mr. Frank Klees: Not very often. I find your response to Mr. Rinaldi very interesting, and that is that you believe the OMB should be scrapped because municipalities have matured to the point where they can handle their own affairs. That's what you said.

Dr. Rick Smith: I think that's a—

Mr. Frank Klees: In light of that, why is it that the very case to which you referred and brought before this committee as an example—this was the Big Bay Point project that was supported by councils in the town of Innisfil, the county of Simcoe, the province of Ontario and the Ontario Municipal Board. Why would it be, then, that you would come forward and force an extensive hearing on that if you really, truly believe that local governments are at the point of maturity where they can in fact make their own decision?

Dr. Rick Smith: I would say a couple of things, Mr. Klees. First of all, the reason we intervened in that case was because we saw a citizens' group being crushed, frankly, by multiple civil suits by this gigantic OMB process, and so that case and the plight that the citizens' group found itself in was part of a larger picture, we think, of intimidation by the developer.

Mr. Frank Klees: So in that particular case, local government was not mature enough to handle the situation or make the appropriate planning decisions regarding this.

I have another couple of questions. I'll just wrap up with this. Mr. Smith, you are the executive director of Environmental Defence Canada; is that right?

Dr. Rick Smith: Correct, yes.

Mr. Frank Klees: You're also the secretary, are you, of the Friends of the Greenbelt Foundation?

Dr. Rick Smith: No, I'm not. I've—

Mr. Frank Klees: Were you at one time?

Dr. Rick Smith: I was. It's been a while since I've been on that board.

Mr. Frank Klees: And while you were on that board, did the Friends of the Greenbelt Foundation contribute some \$600,000 to Environmental Defence?

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Dr. Rick Smith: I'd have to check the dates, but certainly the Friends of the Greenbelt Foundation has granted to Environmental Defence, yes.

Mr. Frank Klees: And Environmental Defence also receives funding from the Ontario Trillium Foundation?

Dr. Rick Smith: Yes, and many other foundations.

Mr. Frank Klees: Some \$537,000, I believe.

Dr. Rick Smith: Again, you have me at a disadvantage.

Mr. Frank Klees: The reason I ask these questions is that it's very interesting to hear the arguments that you're

making against the functioning of the Ontario Municipal Board. You're right: We have the mandate here to make recommendations about the functioning and the accountability of that board, and we will. One of the things that we will be investigating is who appears before that board and how they are funded. I ask you this question: Do you believe that it is appropriate for charitable organizations that receive a tax benefit, and foundations such as Friends of the Greenbelt Foundation and the Ontario Trillium Foundation, to be funding Environmental Defence, of which you are a part—and I'm assuming you get paid by them—and that they should be funding through tax dollars advocacy against decisions that have actually been made by various levels of government? Do you think that's appropriate?

Dr. Rick Smith: Sir, to be honest with you, I'm a little bit shocked at that question and I would have thought better of the Progressive Conservative Party. The implication of your question is that, somehow, charitable organizations at the OMB are the Goliath to the developers' David?

Mr. Frank Klees: No, I'm dealing with the issue of the source of the—

Dr. Rick Smith: That's just quite bizarre, sir.

Mr. Frank Klees: I'm simply talking about the appropriateness of taxpayer dollars funding advocacy groups before the OMB.

Dr. Rick Smith: No taxpayer dollars have funded this advocacy group at the OMB. Let's be clear about that.

Mr. Frank Klees: Are you paid by Environmental Defence?

Dr. Rick Smith: Yes, I am.

Mr. Frank Klees: Does Environmental Defence receive funding from the greenbelt foundation and the Ontario Trillium Foundation?

Dr. Rick Smith: Yes, and—

Mr. Frank Klees: And if someone makes a contribution to Environmental Defence, do they get a tax receipt?

Dr. Rick Smith: Yes, and my organization—

Mr. Frank Klees: That would be tax dollars, sir.

Dr. Rick Smith: Excuse me, it's important to be clear about this: My organization does a great many things. One of them is working with your party on occasion and appearing at press conferences with your former leader on occasion.

Mr. Frank Klees: And what does that have to do with the issue?

Dr. Rick Smith: I'm just saying that my organization does a great many things, as many charities do, and receives a great amount of—we receive money from everyone, from my aunt Pat—

Mr. Frank Klees: But that does not—

Dr. Rick Smith: —to the Ontario Trillium Foundation. Appearing at the OMB is only one of the things that we do.

Mr. Frank Klees: Sir, my point is simply this: This committee has a responsibility to determine whether the function of the OMB and who appears before it is appropriate.

Dr. Rick Smith: Absolutely.

Mr. Frank Klees: And I believe that we've touched on something here that we need to pursue.

Dr. Rick Smith: So are you—

The Chair (Mrs. Julia Munro): Thank you. I'd like to move on. Mr. Prue.

Mr. Michael Prue: Well—and I don't even want you to answer this—I think that if your members want you to assist a community group, you should be allowed to do it. Just so you know, this is not unanimous around this table.

I don't know when you walked into the room, but there have been a number of community groups and others who have come forward and questioned the OMB and the ability of citizens' groups and the high costs involved. However, when the developers were here, they called it a democratic organization and they insisted that although we were the last province in Canada that still had a fully functioning municipal board, that Ontario should be unique. Could you pass comment on whether or not you believe it is a democratic organization—because I found that rather bizarre; I wouldn't use the word Byzantine, but bizarre at least—and whether or not the other provinces, like British Columbia and Quebec, that have done away with the board and the other provinces that have all truncated it a great deal are suffering any as a result of this?

Mr. David Donnelly: Thank you for your question. I think part of the answer lies in how other jurisdictions deal with planning matters that come before them. In those other jurisdictions you mentioned, and in the United States to a lesser degree, there are fixed state or provincial rules around where you can and cannot grow, so you don't need an adjudicative body. The rules are the rules and you follow them. The Ontario Municipal Board builds in such a degree of flexibility that it works towards the developers' advantage.

On planning, site-specific infill or architectural matters, they have architectural boards, which are far less informal, and they do a good job of dealing with things like density and heights—things that often trouble neighbourhoods, but aren't the wider planning questions.

I would say this, though, in terms of the democracy of the process: If we're going to go through an exercise looking at the tax advantage to environmental groups and charities, let's make sure that we also look at the tax benefit to developers who write off their costs at the Ontario Municipal Board and are, in effect, using taxpayers' dollars or not paying taxes based on their representation, their payment of experts. Let's just see the mountain of cash that goes in that side of the equation when we do the analysis of what the citizens' groups have to spend as well.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes the time we have available. Thank you for appearing here today.

ONTARIO BAR ASSOCIATION

The Chair (Mrs. Julia Munro): I'd like now to call on David Potts, Leo Longo and Colin Grant from the

Ontario Bar Association. Good afternoon, gentlemen. Welcome to the standing committee. As you know from observation, you have 30 minutes in which to make a presentation to us, after which we will split the time remaining amongst members of the committee. For the purposes of Hansard, I'd ask that each of you introduce yourselves.

Mr. David Potts: Thank you, Madam Chair. My name is David Potts. I'm the chair of the Ontario Bar Association municipal law section. To my left is Colin Grant. Colin is a vice-chair of the OBA municipal law section. I and Mr. Grant are city solicitors, I for Oshawa, Mr. Grant for Brampton. To my right is Leo Longo. Leo is an active member of the OBA municipal law section and is a senior partner of Aird and Berlis LLP. Mr. Longo has chaired the Law Society of Upper Canada's municipal law specialty committee, and is himself a certified specialist in municipal law in both local government and land use planning and development, representing both public and private sector clients.

The Ontario Bar Association is an autonomous provincial branch of the Canadian Bar Association. It is voluntary, non-partisan and professional, representing over 16,000 lawyers, judges and law students across the province.

The OBA municipal law section is comprised of approximately 400 private sector and public sector lawyers who, in turn, represent the various stakeholders in municipal planning and development law matters in the province of Ontario. Its members regularly practise before the Ontario Municipal Board and appear before other provincial tribunals and municipal councils. The OBA municipal law section executive is elected by the members of the section to act as advocates on behalf of the section. Mr. Grant and I appear in that capacity.

The OBA is grateful for the opportunity to address the standing committee. The OBA's written submission has been filed with the committee clerk. The OBA municipal law section is grateful for many past opportunities we have been given to comment on provincial proposals for municipal and planning law reform, including Ontario Municipal Board reform.

OBA municipal section comments generally do not address policy, but focus on the mechanics necessary to assist the Legislature in achieving its goals. For example, the OBA municipal law section has made several relatively recent submissions relating to the province's goals of supporting local decision-making, while at the same time protecting the broader provincial public interest and providing clear rules for the OMB. There's a list of eight sets of submissions between the years 2004 and 2007 that are listed in the written submission.

The necessity for, and the utility, effectiveness and worth of, the role and function of administrative and quasi-judicial agencies, boards and commissions in general, and the Ontario Municipal Board in particular, have been well documented. Simply put, it is the best means we have of balancing competing interests while maintaining government efficiency and the rule of law.

The Ontario Bar Association supports the continued role of the Ontario Municipal Board as an independent, quasi-judicial administrative tribunal. It is the OBA's position that the province should ensure that the board is well-funded and resourced with qualified members and a professional staff, each appropriately compensated for their duties.

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I'm going to turn to Mr. Longo, who will deal specifically with recent legislative changes, including the Planning Act, section 2.1, and what it means to have regard to municipal decisions and supporting information and material related to those decisions; and secondly, the province's continuing role in land use planning. Mr. Grant will follow by summarizing the Ontario Bar Association's three recommendations that are set out in the submission. Thank you.

Mr. Leo Longo: Thank you very much, Madam Chair and committee members. Time obviously doesn't permit us to get through all the things we've addressed in our report.

Let me, on the topic of "have regard" for a municipal council decision, make a few points for committee's consideration. The first thing is, the Planning Act has for 25 years had the term "have regard" for. There have been court decisions and board decisions as to what that term means. You'll see in your submission how the courts have said the board's responsibility is in exercising and discharging its function under that section.

What's equally important for this committee to remember—I've not heard anyone from the committee mention it—is section 2.1, which says "have regard" for council's decision and "have regard to" the information and submissions that were before council when it made its decision. That encourages—in fact, not only encourages, it obligates the board to look behind the municipal decision to see what information council had. Did they make the decision because it was two months before a municipal election and the room was filled with 300 ratepayers? Did they have staff reports that supported it or did not support it?

So recognize that when this Legislature asked in 2007 for OMB to have regard to municipalities' decisions, it was to also have regard for the basis upon which that decision was made. You'll find in our submission decisions where the OMB talks about the legitimacy of planning purpose, the necessity of transparency and why it does go behind council decisions as obligated under section 2.1. So please remember that.

The next thing I'd like to say on section 2.1 is this: The aspect of having an unelected board overrule the decision of an elected council is not a new one. You'll see in our submission that there have been 13 past studies of the OMB over the last 40 years, and many of the matters you've heard today have been raised in previous standing committees and special committees and studies the province has done. I urge this committee to review that previous body of work. For example, 30 years ago, the predecessor of this committee, when asked to get rid of

the OMB, said, "We believe the right of a citizen to appeal a decision of a municipal council is too important to simply wipe away." So recognize that there is a lot of history of analysis of the OMB and time and time again the government recognizes the importance of the board.

A final comment on history: McRuer, 40 years ago, under the Royal Commission Inquiry into Civil Rights, made this comment about the OMB: Successive Legislatures often look for a jurisdiction to cope with a problem that has arisen and they invariably give it to the OMB to resolve.

My experience in 30 years has been that the board doesn't stick its nose in other people's business. It fulfills the mandate that the province has asked the board to fulfill. It abides by the Legislature. This talk about the board being unaccountable—let me indicate two reasons why that's not right. This board is accountable to the public that appears in front of it and the parties that appear in front of it to act fairly in accordance with the rules of natural justice or else it's accountable to the courts for not obeying the rules of natural justice. It's also accountable through its minister, the AG, to this Legislature. Why are we here today? This is accountability. You're elected officials. So the talk about the board being unaccountable—I ask that it be rejected.

Finally, that the board is a vestige of the past: With the greatest of respect, Mr. Prue, you used that term. We list 40 pieces of legislation where the board has been given jurisdiction, right up to the Clean Water Act. It seems that rather than being a vestige of the past, the board is a proper administrative law implement through which this province delivers policy to its citizens.

The second thing I've been asked to speak on is the provincial role. There was a comment made. Mr. Klees was quite right that in 1983 they got rid of cabinet petitions, so now the province is maybe out of it. Let me tell you five reasons why the province is still stirring the pot:

(1) The Planning Act says that a purpose of the Planning Act is—if you'll give me one moment—"to provide for a land use planning system led by provincial policy." That is a stated purpose of the Planning Act. Provincial policy is the lead for land use planning in Ontario.

(2) You've heard about the growth plan, the greenbelt plan, the Lake Simcoe plan: These are all examples of provincial planning.

(3) Section 3(5) of the Planning Act says that the OMB must, in making its decisions, "be consistent" with the provincial policy and all of those plans. It's not "have regard" for, but "be consistent." Remember, when an act says "be consistent" for one thing and "have regard" for something else, lawyers aren't making this up, but when a different term is used for different things, it means different things. Member Prue knows this, because when Bill 51 went forward, you were most critical about why we were using "have regard" for, that that was the weakest language in the bill. But that's the language that you've given the board to follow, so recognize the board

is doing the job you've given it. It doesn't do this stuff itself. It doesn't make it up. It's following what you've done.

(4) On provincial policy: minister's zoning orders. Don't get these confused with provincial plans. Section 47 allows the Minister of Municipal Affairs and Housing to impose a zoning order—no notice. It overrides zoning.

The city of Toronto didn't want casinos. Woodbine went to court, saying, "We want casinos." The court said, "No. The city can prohibit casinos." Right afterwards, what does the province do? A minister's zoning order, and there are 1,800 slot machines at Woodbine. That power still exists, and the province can exercise it from time to time.

Finally: (5) Even though there are no more cabinet petitions, as of right, the province, 30 days before a hearing, is able to advise the OMB that a matter of provincial interest may be affected. Then the OMB can't make a final decision and it's cabinet that makes the final decision. It's not a power that's used often, but it's there.

So there are five ways that the province still stirs the pot and basically controls land use planning.

My five minutes are up. The final comment is, I know that you received a submission from the Ontario Professional Planners Institute. They're a very significant and important player at the OMB. I just commend their submission to you and ask that you do peruse it, because it does have some very useful information that I think this committee would benefit from.

I now turn it over to Mr. Grant, who will deal with future recommendations we'd like to see this committee consider.

Mr. Colin Grant: Thank you, Mr. Longo, and thank you, Madam Chair. I'd like to focus on recommendations for positive change within the existing administrative system. In particular, the need for maintenance of expertise has been critical to administrative tribunals like the OMB.

In addition to the many legislative changes that have been mentioned, the OBA has taken great interest in the Ministry of Government Services' agency cluster project. What is the agency cluster project? It's the Ministry of Government Services' administrative review of five tribunals, including the Ontario Municipal Board, that have shared stakeholders and related mandates. The Minister of Government Services appointed Mr. Kevin Whitaker, who is chair of the Ontario Labour Relations Board, to head up the agency cluster project as facilitator, and in August 2007, Mr. Whitaker submitted to the Minister of Government Services the final report of the agency cluster facilitator for the municipal, environmental and land planning tribunals. Many of the recommendations in that report have been implemented, or are in the process of being implemented, subject to any legislative changes that may be necessary.

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I want to highlight that in the final report the facilitator recognized the critical importance of expertise to administrative tribunals. I'll quote: "Perhaps the most

fundamental assumption about the appropriate delivery of administrative justice dispute resolution deals with the central concept of expertise." The Ontario Bar Association has supported and continues to support the agency cluster project, in particular that the maintenance of expertise is of critical importance to any review of the Ontario Municipal Board.

Enhancement of necessary expertise to be a qualified Ontario Municipal Board member is of primary concern to the Ontario Bar Association. It's important to ensure that qualified individuals will be hearing appeals and rendering timely decisions on important matters that have direct impact on the quality of life for citizens in Ontario.

The stated goal of the agency cluster project was to create options "so that dispute resolution services can be delivered in an improved way with existing resources." Again, the OBA supports that worthy goal, but there is no point in the provincial government making changes to service delivery models if the OMB will lack modern resources necessary to effectively perform its functions and attract and retain qualified members. This morning, Chair Hubbard made a point of highlighting the need to attract and retain excellent candidates to the career of public administrative adjudication. To ensure that the Ontario Municipal Board succeeds in fulfilling its important public role, expertise is paramount.

The OBA makes three recommendations to the standing committee:

First, the Ontario Municipal Board should have the resources to implement technological improvements to its administrative and hearing processes, likely in conjunction with the other tribunals subject to the cluster. I would note that in direct contrast to the OMB, the self-funded Ontario Energy Board has significant staff resources at its disposal and has the ability to disseminate hearing transcripts and other information to members of the public throughout the hearing process. The OMB has no such tools, as you've heard about today, even though OMB hearings often generate significant public interest and impact on Ontario residents. So the highlight there is that there is a disparity in resources between publicly funded provincial tribunals and privately funded provincial tribunals.

Second, the level of compensation and benefits to OMB members should be increased. I won't go into detailed submissions. In August 2005, the OBA submitted detailed submissions to the Ministry of Municipal Affairs, and those recommendations remain relevant to this day.

Lastly, it's fundamental that OMB members are free to make independent decisions on all matters that come before them. For this reason, the length of tenure of appointments to the board should be allowed to be increased and the renewal process should allow for some appointments to exceed 10 years. Reforming tenure of appointments would assist the board in attracting and retaining excellence and experience. The point is, what can be done to attract qualified people to a career in provincial adjudication?

In conclusion, the oldest administrative tribunal in Ontario, the OMB, has a demonstrated tradition of excellence. The OMB plays a vital role in ensuring that the broad public interest is protected in a variety of decisions impacting Ontarians in urban, rural and northern communities. The right of appeal to the OMB is one of fundamental importance to our existing system in Ontario.

The Ontario Bar Association has previously made several recommendations to the various provincial ministries and to the agency cluster facilitator that have been reiterated today and that we respectfully submit would enhance the board's expertise to make fair and independent decisions on all matters that come before it.

So once again, on behalf of the Ontario Municipal Board, I'd like to thank the standing committee for the privilege of attending before this committee today. We hope that our comments are helpful, and we have left some time for questions.

The Chair (Mrs. Julia Munro): Yes, you have. Thank you very much. We'll begin here with Ms. MacLeod.

Ms. Lisa MacLeod: Welcome to the committee. It was a really interesting deputation. Mr. Longo, I just want to single you out for waking us all up at 4 o'clock in the afternoon, after a long day. I really enjoyed your presentation. I can't say I agree 100% with everything you said—

Mr. Frank Klees: Aw, come on.

Ms. Lisa MacLeod: —but these guys know what that feels like. In any event, I appreciated your comments.

Out of curiosity: Has there ever been an OMB decision that you disagreed with?

Mr. Leo Longo: Yes.

Ms. Lisa MacLeod: So you're objective?

Mr. Leo Longo: I'm objective. Usually they're the ones I lose, but—

Ms. Lisa MacLeod: Touché.

Mr. Leo Longo: Like the courts, the board is staffed with humans, and they come with their backgrounds and their expertise, and sometimes they have their decisions that they make. That's why we have the courts and an allowance to appeal board matters to the court on questions of law.

Ms. Lisa MacLeod: That's a valid point.

Let's talk a second, in the time that I have left, about the criteria for people we would be appointing to this committee, because those committee appointments do come through this committee.

I guess for the benefit of all of us here and those at home who are watching the review of the OMB—I know that's what I'd be doing today if I weren't here—what are the criteria? Should it be planners? Should it be former municipal politicians? Should it be lawyers? What kinds of criteria? Or should we look at a vast skill set of people who include those who are conservationists and historians as well?

Mr. Leo Longo: I would echo many of the things the board chair said, but I would say, rather than looking for

an occupation, that you're looking for a skill set; you're looking for someone who can adjudicate a quasi-judicial matter and make a decision in a legal and policy framework. So that person would need to understand, or have a basic understanding of, both the legal framework as well as the policy framework within which planning is done in Ontario. Many mayors, commissioners of municipalities, professional planners, engineers, lawyers have that skill set. I think the difficulty is not finding those persons; it's attracting them to public service and making it worthwhile for them to serve. I hate to be blunt about this, but many of the most qualified people simply could not afford to give up their practices, give up their jobs in order to serve on the board, because of the way that the salary structure has been, if you will, stifled over the years. We can get into reasons why, but it's just very difficult. At one time, when I first started, board members were close to judges in salary. That's lost now, and it's just difficult to get people. So what you do tend to find is that you get people not in the middle of their career or the height of their career but people at the end of their careers, maybe retiring from their first job and now taking this on as their final job. You may find some. But I think the key thing is to find a qualified candidate who understands the legal and planning process and, as the board member said, is able to write—to be able to express yourself and make a decision.

Ms. Lisa MacLeod: What about the length of tenure? By the way, I agree with you in terms of the writing and making sure it's concise and to the point and not open to—

Mr. Leo Longo: Tenure: The longer the tenure, the more secure the members are to make an independent decision. Up until 1988, I think, when Mr. Scott took away the "at pleasure" and then replaced it with this—just think of this example: OMB is facing an expropriation matter where the issue is whether the value of the land is \$3 million, as the province contends, or \$18 million, as the landowner contends. That board member is up for reappointment in six months. Even if it doesn't have the effect—that's a true example of Torvalley, the Brickworks in the Don Valley Parkway. Without the ability of knowing that I can make an independent decision and be secure in my job, even if you try your best there is the appearance in the public that, gee, you may be making a decision wanting to hold on to your job.

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So the longer the tenure can be, I think, the greater guarantee of the independence of approach that the board member will bring to a problem, and that serves the public interest best. Because, you know, sometimes even the province is wrong. They appear in front of the OMB on many occasions—

Ms. Lisa MacLeod: Well, they have been for the past five years, right?

Mr. Leo Longo: —and they're wrong on occasion. Sometimes you need the board to point that out.

Ms. Lisa MacLeod: Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. Mr. Prue.

Mr. Michael Prue: Just on the same tenure argument, I would have no difficulty, if the board is to continue, with extending the tenure, but the chair today did speak about the ability, which does not now exist, to remove members who are not living up to the potential that is expected. If we are to increase the tenure, as a committee, should we also look at granting the authority to the chair to remove those people who are not up to the job?

Mr. Leo Longo: That's an interesting question. I'm not sure if it would be solely on the review of the chair itself. I have to confess some lack of knowledge as to how it was done when positions were held at pleasure, but I believe there was a mechanism by which the province, through the AG's office, would hear investigations or complaints about the competency of the member. If it was determined that it reached a point through either medical problems or dependencies or something that may have developed that that member was no longer able to serve, there was a way of reviewing it internally while ensuring that the rights of the individual were being respected, because you obviously can't railroad someone and say, "You're going off the board now." There must be a process involved. I'm sorry I can't help you as to what all the steps would be for that.

Mr. Michael Prue: All right.

Some of the people who came before us were concerned about the board's lack of knowledge on heritage matters. We got a whole list of heritage matters that they did not feel were dealt with appropriately, everything from Alma College to incidents in St. Catharines, Thunder Bay and Lake Superior. Are you satisfied that the board has the kind of heritage knowledge that's necessary?

Mr. Leo Longo: I believe the board has the ability to weigh evidence on a number of matters of expertise. As a lawyer, I don't have expertise in hydrology or engineering, but I'm able to call evidence about that, and the board every day is weighing expert testimony and judging it.

If I may say, if there is a failure in the heritage aspect of matters, I don't think it's in the board's appreciation of heritage matters. I believe it's in perhaps some inherent weaknesses in the Ontario Heritage Act that perhaps don't put heritage matters on the plane that some of these individuals would like to have them. I think the board is working properly within the milieu of what the Ontario Heritage Act says. I think those complaining may want that act actually toughened.

Mr. Michael Prue: Another complaint, and the one I take most seriously from the complainants, is the whole issue of SLAPP, about the intimidation of ordinary citizens and groups being taken to task and threatened with and proceeded with millions of dollars for having the temerity, the unmitigated gall of going before the board. Should that be abolished? I remember speaking about that in the Legislature too, how this was going to be problematic.

Mr. Leo Longo: First of all, a lot of that stuff happens outside of the board's process and the board's control. Let me make that clear. You heard that some of the

threats made of litigation were civil litigation. The board has nothing to do with that. The board can only control its own process. Its rules say, number one, that costs don't follow the event; that costs are only awarded in the rarest of circumstances; and, number three, it's wrong to intimidate somebody with a threat of cost to get them not to appeal a matter. The board has made that all clear right now. So I'm not sure how much more the board, in its own processes, can control that kind of behaviour.

Mr. Michael Prue: I'm asking what we can do so that the board is not stuck with that.

Mr. Leo Longo: I understand that in some jurisdictions, I think in California and other places, they actually have anti-SLAPP legislation. I've never had the time to review that information so I'm not sure what the nature of that legislation is. But that could be employed.

Interjection.

Mr. Michael Prue: I guess my time is up.

The Chair (Mrs. Julia Munro): Yes.

Mr. Michael Prue: Okay, there you go.

The Chair (Mrs. Julia Munro): Mr. Rinaldi.

Mr. Lou Rinaldi: Thanks, gentlemen, for a very interesting presentation this afternoon, and fairly knowledgeable.

I cannot resist, having three lawyers in front of me, because I could not afford this information otherwise, asking you a question: "Have regard to" the decisions of municipal councils—what does that really mean?

Mr. Leo Longo: It's responded to in our materials, but—

Mr. Lou Rinaldi: And I know I'm going to get three different answers.

Mr. Leo Longo: The judges have said the range of "have regard to" goes the spectrum from to "recite ... then ignore" to "slavishly and rigidly adhere." Do you give it extra weight? Do you simply consider that it's there and move on? There is a whole grey area.

What the courts have said, and it's in our materials, is that you aren't bound by it but you're supposed to look at the policy in light of all the circumstances and make a determination as to whether in this case that policy comes into play or does not come into play. So it's one of being respectful of the policy but recognizing the independence of the decision-maker to decide whether, under all the facts of the case, that policy should trump something else.

There has been clear guidance. I don't think the board misunderstands the test. I think a lot of people misunderstand what the Legislature has asked the board to do.

Mr. Lou Rinaldi: Thank you very much, Madam Chair.

The Chair (Mrs. Julia Munro): Thank you very much for coming today. We certainly appreciate your insights; very helpful.

This committee stands adjourned until 9 o'clock tomorrow morning, at which time we will conduct a review of Ontario Power Generation.

I would like to ask members of the committee if they would just stay here for three or four minutes. We need to have a conversation with our researcher.

The committee continued in closed session at 1605.

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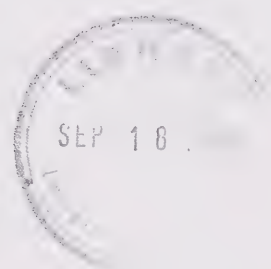
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Mercredi 9 septembre 2009



Standing Committee on Government Agencies

Agency review:

Ontario Power Generation

Comité permanent des organismes gouvernementaux

Examen des organismes
gouvernementaux :

Ontario Power Generation

Chair: Julia Munro
Clerk: Douglas Arnott

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIES

Wednesday 9 September 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Mercredi 9 septembre 2009

The committee met at 0930 in room 151, following a closed session.

AGENCY REVIEW

ONTARIO POWER GENERATION

The Chair (Mrs. Julia Munro): Good morning, ladies and gentlemen, and welcome to the Standing Committee on Government Agencies. This morning, we are pleased to have Ontario Power Generation here for our hearings. I would just remind everyone that we will begin in a moment and have the opportunity to hear from the representatives of Ontario Power Generation. After that presentation, we will have questions from members of the committee. This morning, we will begin our question round with the NDP.

First of all, I'd like to welcome the chair, Mr. Epp. For the purposes of Hansard, I'd ask you to introduce those who are with you and begin when you're ready.

Hon. Jake Epp: Thank you, Madam Chair and members of the committee. It's been two years since Ontario Power Generation's last appearance before you, and we welcome this opportunity to be here again.

Let me, as per your instructions, introduce the people who are with me. To my immediate right is William Sheffield. Bill is a member of the OPG board of directors and he's chair of the board's compensation and human resources committee. He was here as well in 2007 when we last appeared.

To my left, we have Tom Mitchell. Tom has been recently appointed as the president and CEO of OPG. I'll introduce him a little more formally as we get closer to his comment.

Sitting next to Tom is Donn Hanbidge, who's OPG's senior vice-president, as well as being our chief financial officer. Quite aside from Tom's leadership, Donn has given us great leadership and has been recognized internationally for some of the work that OPG has done in the financial sector.

I'd like to say a couple of things, then, if I might, about our new CEO and president. Tom has been with OPG since 2002. For the past three years, he's been our chief nuclear officer, and he's been responsible for the work of approximately 8,000 employees, up to July 1 of this year, and now it's the full 12,000. Before that, he held senior positions at the World Association of Nuclear Operators, as well as the Institute of Nuclear Power

Operations in Atlanta. As well, he's managed nuclear plants in the United States and obviously here in Canada.

Tom's appointment as our CEO has the full support of the OPG board and the confidence of our shareholder. We believe that his solid operational and management experience makes him the right person to lead OPG successfully into the next decade, and he'll speak to you as to the operations of OPG.

As a preface to Tom's remarks, may I say that the board is very pleased with OPG's performance, the strong leadership provided by management and the continued focus on some key areas, those being safety, financial sustainability, cost reduction, and asset management and operations.

When I was first appointed to chair this board, I don't have to give any members of the Legislature a lesson that we were struggling. We believe that the performance you'll see today is a testament to the hard work and success not only of the board but of management, our employees and I think the people of Ontario, who see OPG as "theirs."

Our board understands that the current global economic downturn poses new challenges for Ontario's economy as well as our company, and with our diversity of generation resources and the quality of our management and employees, the board believes that OPG is up to the challenge for the next 10 years. But going forward, all of us, I think, and the board, will continue to provide guidance and stewardship to OPG management as they address those challenges and lead the company to become a "leading low-emissions energy company and generator of choice for Ontario."

In doing so, our job is to ensure that the company continues to reflect the highest standards of corporate governance, public and workplace safety, corporate citizenship, and environmental and social responsibility. We will also ensure that OPG continues to operate in an open, transparent and accountable manner, and this includes having an open and productive relationship with our shareholder, the province of Ontario.

Today represents, we believe, an excellent opportunity for OPG to communicate the ways in which we are providing that service, value to Ontarians and responsible stewardship for these important assets on behalf of the people of Ontario, who own those assets.

With those words, may I turn to Tom, and he'll give you the operational side of OPG.

0940

Mr. Tom Mitchell: Good morning, Madam Chair and members. I'm pleased to be here. I'm pleased to be here to discuss OPG's performance and to answer your questions in this, my seventh week as CEO.

I would like to begin my remarks with some observations on the role of OPG and the values that define who we are. OPG is heir to a strong tradition of generating electricity. It's a tradition marked by service to the people of Ontario and commitment to the principle of public power. Our predecessor companies—the Hydro-Electric Power Commission of Ontario and Ontario Hydro—established this tradition. Through an array of productive and reliable generating assets, they safely provided Ontarians with electricity for over 100 years.

In the first half of the 20th century, these assets were virtually all hydroelectric, the product of an enormous acquisition and building program that laid the foundation for Ontario's future greatness as an economy and society. In the 1950s and 1960s, fossil plants were added to the portfolio to further meet the province's growing energy needs. And as our energy needs continued to expand from the 1970s to the 1990s, nuclear stations were brought into the mix. As a result of this legacy, Ontario today has one of the world's great power systems, noted for the diversity of its generating facilities and its excellent record of safety, reliability and flexibility.

With the break-up of Ontario Hydro in 1999, these generating assets and the tradition of service that they represent were passed to Ontario Power Generation. We became custodians and stewards of the legacy of publicly owned power generation in Ontario.

We're proud of this role. We take it seriously, as did our predecessors. But we are not clones of our predecessors. Despite the fact that many people still think Ontario Hydro exists or that OPG is Ontario Hydro, we're not.

Ontario Hydro was a monopoly and a fully integrated utility. It was designed to meet, and obliged to meet, all of Ontario's energy needs and was responsible for all aspects of Ontario's power system. It was also looked upon and used by governments of the time as a tool for achieving certain economic and social policy outcomes.

OPG is a very different kind of company. In contrast to Ontario Hydro, we operate in a competitive environment with other power producers, and our responsibilities are much more specific. We don't transmit or distribute electricity, we don't manage Ontario's electricity market, we don't plan supply and we don't make energy policy. These responsibilities all belong to other organizations: Hydro One, the Independent Electricity System Operator, the Ontario Power Authority and the Ministry of Energy and Infrastructure.

Our mandate at OPG is to focus on one thing: producing electricity to help meet Ontario's electricity needs. And the specifics of what we do are laid out in a written mandate from the shareholder issued in 2005.

In OPG's 10-year history, we annually produced the electricity for about two thirds of the Ontario electricity

market. Everything we do centres on this core mandate, and there are many facets to this mandate. It includes the operation of our assets, 24/7, which span the province and consist of three nuclear stations, with 10 operating units; five fossil-fuelled plants, currently with 15 units; and 65 hydroelectric stations, with a total of 232 generating units; and 240 water control structures located on 24 river systems across Ontario.

It includes keeping these assets in good condition through refurbishment, strategic maintenance and on-going equipment improvements to enhance efficiency and output, and by hiring, training and effectively leading the skilled people who do these things every day. It includes expanding our asset base by building new plants and facilities that help enhance Ontario's supply of clean, low-emission power.

Our role as a generator also includes producing increasing amounts of low- and no-emission electricity. In 2008, OPG's nuclear and hydro assets accounted for about 78% of our production. In the first half of 2009, they accounted for nearly 87%. This provides a strong platform to support the goals of Ontario's Green Energy Act.

Finally, our role as a generator especially includes managing our assets according to well-defined and established commercial principles. We are a public power business dedicated to delivering value to the people of Ontario. I believe that a strong business focus is essential for and compatible with this role. That's why concepts like "value for money," "cost efficiency" and "performance" are more than just words at OPG; they are the values that we are driving into our culture and upon which we strive to base all of our business decisions and practices.

The mantra of my predecessor Jim Hankinson was, "It's all about performance," and I intend to build on that mantra during my tenure. I've provided to the clerk a copy of a just-issued, publicly available performance report, *It's All About Performance*, that is available for your review.

There is one final value that we adhere to that I want to emphasize to this committee. It's the value of accountability. As a public power company, OPG is accountable to the people of Ontario. A very important form of this accountability is that the majority of the energy we produce is now regulated by the Ontario Energy Board in a public, open and demanding review of our businesses. These regulated assets produce the least expensive form of electricity for ratepayers. Every year for the past three years—that's from 2006 to 2008—the average sales price OPG has received for its electricity has been lower than the province's weighted average hourly spot market price. This represents a significant contribution to consumers and towards maintaining a competitive economy in Ontario.

Accountability also means developing clear and ethical policies and guidelines when it comes to incurring expenses and procuring the goods and services we need to operate our business. As CEO, my job is to make sure these policies are understood and followed throughout

the company. While this is an evolving process, OPG can be proud of the progress it's made.

We have always had rules and procedures governing procurement and expenses at OPG but we have also worked to refine and improve them, both on our own initiative and in response to external benchmarking. For example, in 2004, KPMG conducted an operational review of OPG, which included a third party assessment of our expense policy. In response to that review, we tightened up a number of our policies and practices. And in 2006, following the Auditor General's report, we implemented a number of steps to further strengthen our procedures. The Auditor General subsequently noted that all of his recommendations were addressed by OPG.

In terms of contracting, I can assure you that we spend money to produce business results. Nuclear outages, new equipment and hydroelectric runner upgrades: All produce tangible results that can be seen in our performance and that we continually measure and evaluate.

At the heart of how we expect our staff to do business is OPG's code of business conduct, and I have a copy here also available for the committee. The code establishes three key principles—integrity, excellence and citizenship—that underpin our business activities. Everything we do at OPG, including our policies and guidelines on procurement and expenses, rests on these principles, which all employees must follow—and if they don't, they are held to account. New employees must complete a training program based on the code within 30 days of being hired, and every employee must complete a training program every two years. I just completed my biennial training last month. It's a good course with lots of practical examples that are directly relevant to our staff.

We also have a chief ethics officer who provides additional support and oversight with respect to our code and whom employees can and do contact if they have questions or concerns regarding a business ethics issue.

As a result of all of these measures, I believe OPG's governance, policies and practices are already very similar to those of the Ontario public service. In some cases they appear to be more stringent. Where they are not as stringent or specific, we will work to bring them up to OPS levels. We will continue to refine and improve our policies to ensure they are consistent with the high standards the government expects from the agencies, boards and commissions under its authority. We will submit our expenses for any additional reviews requested, including to the Integrity Commissioner.

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Premier McGuinty has made it clear that the senior management of government organizations and companies, of which OPG is one, are to lead by example. As the executive accountable, I am committed to meeting that expectation. OPG will comply with new directives on procurement and expenses, and we'll be doing more internal checks.

As I said, OPG sees itself as the custodians of the people's assets and interests. There are a number of ways we fulfill that duty:

- by operating our nuclear, hydroelectric and fossil assets effectively;

- by keeping our facilities well maintained and in top operating condition to protect public safety and the environment; and

- by managing projects according to expected standards of quality and safety and in a timely, cost-effective manner.

We are also expanding our portfolio to provide Ontario with more clean energy, especially on the hydroelectric front. In support of our hydroelectric development activities, we are working with First Nations communities to build strong relationships based on openness, respect and mutual interest. This is a major success story that we hope will be a model for others.

We also add value to Ontario in areas such as biodiversity, safety and community commitment. For example, in biodiversity, we planted more than 3.8 million trees and shrubs across Ontario since the year 2000, and in the area of community commitment, we contributed in 2008 nearly \$4 billion to the province's economy through purchases, salaries and payments to governments at various levels.

I recognize that OPG has a challenge operating in an evolving electricity sector. As a value-driven company, I have every confidence we can meet that challenge. At OPG we believe in excellence, performance, efficiency, accountability and stewardship, and we believe these values will see us through.

In conclusion, I see a promising future for OPG, built on operating our low-emission, lower-cost generation 24/7 and adding new biomass and revitalized nuclear as needed to keep the lights on and keep the rates low.

I welcome your questions about our operations and the chance to expand further on my statement. Thank you very much.

The Chair (Mrs. Julia Munro): Thank you very much. As I mentioned before, we'll begin with the NDP, Mr. Tabuns. Each caucus will have approximately 15 minutes for the first two rounds and then whatever's left over will be divided, third round.

Mr. Peter Tabuns: Tom, thank you very much. Thank you for the presentation this morning. Good to see you both—good to see you all; sorry, I didn't mean to be exclusionary in my comments.

The first question I have is about the proposed new build at Darlington. I know it was the OPA that was putting out those calls. What was the role of OPG in that process, preparing for the calls and assessing the calls?

Hon. Jake Epp: If you don't mind, I'll ask Tom to answer that, other than to say from the board's perspective, the board takes these mandates from its shareholder. The board obviously, if it was called upon to do so, would be responsible to make sure that the project is both evaluated and built and functioning along the principles that Tom's mentioned.

To your specific question, I'll ask Tom to answer that.

Mr. Tom Mitchell: Mr. Tabuns, I think as you are aware, and you've mentioned, Infrastructure Ontario was

leading the procurement process—of course, which has now been suspended.

Mr. Peter Tabuns: Yes.

Mr. Tom Mitchell: Our role in that was we were part of teams that Infrastructure Ontario had set up to evaluate various parts of the proposal. Obviously this was all done under strict confidentiality. So we performed the activities that were requested by Infrastructure Ontario and provided that information. What you've seen transpire is the outcome of the process that was managed by Infrastructure Ontario.

Mr. Peter Tabuns: Did OPG have to assume any expenses at Darlington in preparation for this bid? Did you do any pre-engineering work there? Were there costs, either in outside consultants or inside staff, related to this RFP?

Mr. Tom Mitchell: Mr. Tabuns, there is work associated with the Darlington new build project. Perhaps it would be good if I could just explain what is still transpiring on the nuclear—

Mr. Peter Tabuns: I'd be happy to hear your comments.

Mr. Tom Mitchell: We are proceeding with the work needed to continue with an environmental assessment process and a site licence process. We are doing that in a technology-neutral way. So what is going on in that is, we're doing preparation of paperwork, being ready to make submissions and do all of that work. Our goal is to make sure that the Darlington site is available for a new nuclear project, if and when the procurement process provides a reactor design to put on that.

We're very excited that the Darlington site was selected, and we're very excited that OPG was selected to be the operator. So we are continuing with those processes, again, just to make sure that when and if the procurement process provides a design, we can move forward with implementing a new-build nuclear project at the Darlington site.

Mr. Peter Tabuns: Can you tell us what it has cost OPG so far?

Mr. Tom Mitchell: I can't give you that exact figure. We could provide that.

Mr. Peter Tabuns: Could you provide this committee with that figure via correspondence?

Mr. Tom Mitchell: Yes.

Mr. Peter Tabuns: Okay, thank you.

The original process in the building of Darlington was characterized by on-again and off-again decision making, and subsequent governments have normally cited that as the reason for the spiralling costs of that project. What we have now, with regard to Darlington, is for us strongly reminiscent of the experience in the 1980s of on-again, off-again decision-making. Is this a concern to OPG?

Mr. Tom Mitchell: Mr. Tabuns, I can't comment on your characterization of the past. I wasn't here in the past.

Mr. Peter Tabuns: Fair enough.

Mr. Tom Mitchell: But my sense is that the process that's in place was laid out in terms of, we knew that the environmental assessment and site licences, those processes, would take time to go through. We're proceeding with those.

Our objective would be, if and when a decision is made to build a new nuclear power plant at Darlington, that we will be ready to assume our responsibility with a place to put it and, at the appropriate time, with a team ready to commission and operate it.

Mr. Peter Tabuns: If, in the end, the Candu bid is rejected and the Areva bid is accepted, what are the financial and organizational consequences for OPG, given that your organization, the nuclear end, is organized around the Candu technology—technology your people are trained in? I'm sure that in terms of spare parts and consultants, all of that, you have a Candu backup. What do you see as the consequences for you?

Mr. Tom Mitchell: Mr. Tabuns, the Ontario procurement process was to look at the entire life cycle cost of all these different technologies. My understanding is that those types of questions and concerns were built into the process.

What I can tell you is that obviously we're quite comfortable, at OPG, operating Candu technology, but I can also tell you that we are familiar with operating other types of technologies. I'm quite confident, based on my personal experience in operating different types of technologies—light water reactors—that we can successfully operate a Candu technology or a technology other than Candu at Darlington if that's what is in the best interests of the people of Ontario.

Mr. Peter Tabuns: So have you done an assessment of the cost to OPG of dealing with a different technology on that site?

Mr. Tom Mitchell: Mr. Tabuns, I believe I attempted to answer that question in saying that the—

Mr. Peter Tabuns: I understand, but I wanted a different answer. I wanted clarification on what it's going to cost you, which is why I asked you a second time.

Mr. Tom Mitchell: I understand that. It's built into the cost of operating a new plant, and the life cycle cost was a major consideration in the entire procurement process, so those issues would have been dealt with through that process.

Mr. Peter Tabuns: And what's it going to cost OPG?
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Mr. Tom Mitchell: I don't believe there's any additional cost other than the cost that would be associated with operating a power plant.

Mr. Peter Tabuns: Okay. When will the Darlington A reactors reach the end of their life span?

Mr. Tom Mitchell: The end of life of a Candu reactor is—it's not a time-driven activity; it is an activity that is driven by engineering analyses of major components. Every outage and between outages we do hundreds of tests and inspections. We assure ourselves and the regulator that that plant is fit for service based on, as I said, hundreds of inspections, tests and measurements.

We would intend to operate the plants for as long as the results of those fitness-for-service evaluations indicate that it's completely safe to do so. All of those results are reviewed by the independent Canadian Nuclear Safety Commission regulator, who issues on a periodic basis a licence for the Darlington facility. We currently have a five-year licence, which is the longest licence that's been issued by the commission for a nuclear operating plant. That takes us to 2013. There is nothing right now that would indicate anything other than going in for a renewal of that licence in 2013.

In particular, I would mention in that regard that we just completed a four-unit planned outage at Darlington, which is an inspection of the containment and emergency systems. That was a very successful outage. What it showed was that the condition of those systems is excellent and supports the continued operation until the next planned inspection of the systems, and that's on a 12-year frequency.

Mr. Peter Tabuns: Given the long lead times, normally, to refurbish, to make the decision to do the engineering and then carry out the work to refurbish a plant, I would think that most operators would be looking 10 years out. I have heard from time to time reference to 2018 as a target year for refurbishment of Darlington. I appreciate the fact that you inspect these plants whenever there's an outage.

Do you at this point have a date when you're expecting to be looking at refurbishing this plant, or do you have no date for refurbishment at this point?

Mr. Tom Mitchell: The 2018 date that you refer to—for talking purposes, one generally establishes sort of normal nominal timelines that you use for planning purposes, and I think I tried to explain that the real date is based on actual results. That is, I would say in a general sense, the nominal life of the plant based on our current estimates.

You're right that our refurbishment project is a very complicated project. We have begun, as you mentioned, because of the timelines, the condition assessment of Darlington, and we are getting ready to proceed with the environmental assessment for Darlington refurbishment. That work has been initiated.

By the way, what we intend to do is use the environmental assessment for new build, as many of those components can be directly applied to the Darlington refurbishment environmental assessment, so we'll maximize our efficiency in that way.

We have begun what I would call the preliminary reviews. There is a very well defined regulatory process which we've been through and understand. We've mapped out those timelines, and I can assure you that we would be ready to refurbish Darlington if it's identified as a need in the system, which we believe it to be—if it's identified as being important to the electrical system, which we believe it would be—and to meet a schedule for that refurbishment that would be coordinated with overall plans and needs in the system.

Mr. Peter Tabuns: I'll go back to my question. You've done a lot of answering questions at committee, I

can tell. The question of when that environmental assessment is targeting a date: Are we talking 2018, 2025, 2030? What's the ballpark when you expect to actually be doing work? And I know you can be off a year or so.

Mr. Tom Mitchell: As I said, the nominal timeline is 2018. I think the other thing—and this is why we need to consult with system planners and the system operator. I don't think it would be prudent to do all four units at once. We would spread them out. So we're doing what I would call the conceptual level engineering, which looks at how you lay them out in a sequence. Do you two at a time? Do you do one at a time? Do you do one with some overlap? That work is still under way and hasn't been completed, so it would, in my view, bracket that timeline.

Mr. Peter Tabuns: And what, at this point, are you budgeting for the refurbishment of those units?

Mr. Tom Mitchell: We do not have a budget for refurbishing the units. We are doing the work in which one would determine the scope. That's why you do condition assessments. That's why we do an integrated safety review. We have learned that it is important, when you develop the duration and cost of a project, to make sure one understands, as specifically as one can, the scope.

The scope would be driven by three factors. One is, what are the results of the environmental assessment—we don't have that yet; second, the results of the integrated safety review, which is required by the CNSC to review Darlington to modern codes and standards; and third is our own analysis of what are the investments we want to make so that when we come out of a refurbishment, we have a plant that's operating in tip-top shape. All of those will come together into a scope, then our best practice that we've learned—and it's typical of the industry—is then to lay that through detailed engineering into a scope schedule and the cost.

Now, having said that, we look at the asset at Darlington; it is performing very well in all facets of its operation. For example, in the first quarter of this year, Darlington station operated at a 99.9% capacity factor, which is about as close to perfection as you can get in this business. We think it's a fine asset and we intend to manage it in a way that it will continue to be a fine asset for the people of Ontario for as long as it's safe, reliable and economical to do so.

The Chair (Mrs. Julia Munro): Thank you very much. It's time for us to move on. Mr. Brown.

Mr. Michael A. Brown: Welcome. My question has to do with the aboriginal relationships of the corporation and how you are proceeding to work with the aboriginal groups and First Nations to achieve mutually beneficial results, hopefully, on behalf of the people of Ontario. Perhaps someone would like to describe that.

Hon. Jake Epp: Possibly I could start, Mr. Brown. I won't go into the background of the relationship between Ontario Hydro and First Nations; all of us can write our chapters. What I think is important is the change that was instituted at Ontario Power Generation. The board strongly endorsed the change, and the change is this—

and if you don't mind my being quite personal, having had a little bit of background in this subject, I truly believe that the First Nations of Canada have to become partners in terms of economic development, social development. They will do it to their best interests and their best lights, which is not much different from the rest of us.

That being said as background, what we changed is that we have formed partnerships. Before you can form a partnership, you have to take care of the past, and where there are grievances, you have to openly resolve the grievances. You can't change the effect or the historical fact but you can change the go-forward platform on which you want to have a mutual relationship.

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So in a number of cases, we have resolved the grievances. I want to put this as a minimum point: There have been financial contributions, but I believe it is the relationship that's more important than the financial. The result of that is, then you have a platform. So today they are partners. The best example I can give you is Lac Seul, where they are now 25% partners. There are others where we are in negotiations. If we develop more hydroelectric in the north—and that is a purpose of the board and management to do that—then these are the platforms on which we will operate.

Is everything perfect? Has history been taken care of? No. Do I believe we have the right set of attitudes and relationships? I believe we've made some progress.

Tom, anything?

Mr. Tom Mitchell: I think I would just add a couple of comments. Jake has used the word which I think is the highlight here, which is "partnerships." We have developed relationships and partnerships. We have, I think, moved from people and organizations and groups that are opposed, if you will, to now being proponents with each other in these projects.

I would tell you that my view is that OPG, under Jake's guidance and my predecessor's leadership, has demonstrated a degree of persistence and patience in developing those relationships and then providing for some outcomes.

Actually, before I took the job of CEO, Jake and I went up to Whitesand First Nation and I participated in a public apology for the past. I think what moved me the most personally in that was hearing the elders talk about the past but also talk about the promise of the future. I left that whole experience with a realization that the Little Jackfish project, which is still under development, is an opportunity for this company and for the province. So we're very excited about the work we've done with the Moose Cree and others.

I can tell you that as I have toured the province and I've been—I was at one point at Whitedog Falls generating station. I think it was 10 kilometres from Manitoba, and then later on I was on the Montreal and Mattagami. I have sought out, when available, First Nations to talk with them, to meet them and to establish a relationship to carry forward in these partnerships. So it's a personal objective of mine, as well.

Mr. Michael A. Brown: Just to follow up just briefly, is the corporation providing opportunities to do business for aboriginal groups and businesses with the corporation? One of the things we're all interested in is seeing that aboriginal companies have opportunities to progress and participate in our economy more generally. Is there any specific thing you're doing along that line?

Mr. Tom Mitchell: I think what I would tell you is that in general we are interested in establishing those opportunities, consistent, of course, with the procurement requirements that exist. But we are sensitive to aboriginal-based businesses. What we try to do is encourage them to participate in the processes so that they have the opportunity.

The other thing I would tell you is that we are heavily involved in and strongly support the Lieutenant Governor's programs of literacy, and our employees have participated in that. What we want to do is to provide encouragement to persons to obtain the educational requirements to allow them to enter the trades and become engineers and we hope eventually be employed by OPG in one or more of its operations.

Mr. Michael A. Brown: Thank you. Mr. Johnson.

Mr. Rick Johnson: As someone who lives about 25 kilometres north of Darlington—and many of my constituents work there and were involved in building it. Actually, a number of my neighbours still work there. Reading through the material that has been provided, the safety record, you have to be commended for that, and I personally thank you for that, living in the neighbourhood, so to speak.

Mr. Mitchell, as the new president and CEO, you have extensive background in nuclear. What are your goals for OPG over the next few years?

Mr. Tom Mitchell: Thank you very much for your question. I do appreciate you recognizing the good work that's done. I currently live in Whitby, so I'm right between our two nuclear stations. I can assure you that we live and work in those communities and we take safety as our number one priority in everything we do, so I do appreciate the acknowledgment.

In terms of my priorities, as I mentioned in my remarks, we have an evolving electricity sector that we're entering into. Obviously, my focus, with my background, is to make sure that we operate all of the facilities that I mentioned—our nuclear plants, our fossil fuel plants and our hydroelectric facilities and water control structures—to the highest standards in meeting all of the requirements.

Beyond that, we want to maximize the value of those assets for the people of Ontario. We see a lot of exciting opportunities in that. We see expanding our hydroelectric base. I recently visited and toured the plants that we're building on the Montreal and the Mattagami. I can report to you that excavations are almost done, the concrete's being poured and the major parts of those plants are there and being installed, so we're looking forward to 44 megawatts of clean energy.

We're also very interested in other power plants that already exist and in upgrades to our facilities on the Mattagami.

In the nuclear file, we're interested in revitalization of those assets and are excited about refurbishments and new build.

In the fossil fuel area, we are extremely excited about the opportunities of biomass and of re-powering a substantial portion, if possible—if it can be done safely, reliably and economically—of them with wood, which we think would help establish a use of Ontario wood products in making electricity.

I would say that even more recently, I've become quite aware of a number of what I would call exciting possibilities in agricultural biomass and using non-food—we're not going to burn food—agricultural parts to burn and make electricity. I view this as an excellent opportunity. In fact, the word I would use, again, in this is the same word I used on First Nations: It's about partnerships. It's about developing partners in the wood and agricultural industry to see what the fuel supply is. We are actively looking at converting our Atikokan facility to wood-based biomass. We set an aggressive target for that: 2012. We're looking at the possibilities in other plants for wood and/or agricultural biomass or even co-fuelling them in some other way so that we can provide a useful asset and value to those assets for the people of Ontario.

One thing I would point out in that is that in support of the Green Energy Act, we understand there will be a need for wind generation support, and we think that our re-powered coal plants—we're powering them with biomass—would allow what's called a low-load capability. We can operate those plants at extremely low power levels and ramp them through the entire power range. That would be a benefit over combined-cycle gas plants, which tend to have a very fine operating range at the top, if you will, of the power range for the plant, but in lower power levels, you're sort of on and off.

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We think there is a niche there where we can support the Green Energy Act and renewables, and support it using a renewable, carbon-neutral resource. I wouldn't want to lay them out in a set of priorities. I would say we're moving on all of those fronts. But I would end with this: With all those opportunities, I can assure you we will never lose focus on operating safely, reliably and economically the power plants we have. We make two thirds of the electricity in this province, we believe we are doing it in a way today that is low or no emission, and we're keeping the rates low. We're not going to lose sight of the value that we provide in doing that.

Mr. Rick Johnson: As you move forward, as Mr. Brown said earlier about working with our aboriginal peoples in the north, do you see any further development of water resources up there? I grew up in Manitoba, and of course the whole of northern Manitoba—

Hon. Jake Epp: All of us have a certain cachet.

Mr. Rick Johnson: I visited the Gillam station before it opened in the late 1960s and it was really quite

remarkable to see. Do you see any expansion of that in working with the aboriginal peoples in northern Ontario?

Mr. Tom Mitchell: I think it's an excellent question. As I've mentioned, we're certainly looking at expanding on the Mattagami. We're looking at Little Jackfish. Obviously we're quite proud of our Lac Seul generating facility. We would certainly be interested and are interested in evaluating other projects where we could again partner with First Nations. I think probably the only limit is to our imagination and to sites.

What I would tell you is that we do want to make sure that as we look at those opportunities, we can deliver the results in terms of getting those projects done. So we'll always try to temper our imagination with the practicality of what we can accomplish.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on. Mr. Yakubuski?

Mr. John Yakubuski: Thank you very much for joining us this morning, and congratulations to you, Mr. Mitchell, for your first seven weeks—the toughest seven weeks.

Anyway, I'm going to start by asking some questions on nuclear for probably different reasons than Mr. Tabuns, but I may get the same answers; I don't know. Let's talk about the nuclear performance. You talked about how in the first quarter, Darlington performed at 99.9%. It's not just the first quarter; your numbers recently have been spectacular at Darlington. I think one of the units, unit 3, was the top-performing Candu reactor in the world at 98-point-something or 99-point-something per cent for the whole year last year. Is that correct?

Mr. Tom Mitchell: Yes, if I could maybe just expand on that. But I think to answer your general theme here—

Mr. David Ramsay: That's not the government side.

Mr. John Yakubuski: Oh, we'll be getting there, David. Don't worry.

Mr. Tom Mitchell: I think the facts that you're referring to are that in 2008—and again, I think this is a testimony to our staff. Every year a list is published of the top Candu performers in the world. OPG had four out of the top five in the world in Candus. Three of them were at Darlington, including the one that you mentioned at the top. Number 5 was Pickering B, unit 6, which I'm quite proud of, because I used to run the Pickering B station. It's good to see a Pickering unit in the top five. The fourth was a Romanian station, a Romanian Candu. It was its first year of operation. So it's quite an august group, I would say, to be a part of. We were glad to see that level of performance.

You're right; it's more than Darlington. This year, we have a Pickering unit at 97% capacity factor. It just completed a 454-day run, which is the type of performance I like to see—safety, reliability—and we actually now have three units at Pickering this year that are over 91%.

Mr. John Yakubuski: I just want to quantify that top-performing reactor because it's not just about being the top five. The top-performing reactor at Darlington for the year was over 99%, correct?

Mr. Tom Mitchell: I will confirm that number, but I believe that to be the case, yes.

Mr. John Yakabuski: You will confirm it?

Mr. Tom Mitchell: I will confirm it.

Mr. John Yakabuski: So if nuclear's—I mean, it's performing tremendously well. If you look at the IESO website, and if you look at the generator reports, as a researcher told us we should do from time to time, and you look at our capability and the output from our nuclear fleet, it's very good, unbelievably good, other than when you had your planned outages in May, which was a once-in-10-or-12-year-cycle type of thing. So we know that the nuclear fleet is dependable. Now what are we going to do, I guess is the question, because Mr. Tabuns talked about refurbishment, and the government has made the decision that they're going to suspend the new-build process.

We are looking at a time when—and I understand your issue; you can't just exactly say when a unit is due for refurbishment based on the time of the year or the year. There's a whole lot of critical information that has to go into that based on what it's been doing through its life cycle. Some people are old at 50 and some people are young at 90; we understand that. But there is going to be a time, and given that the government has gone ahead and they've made the decision that they're going to shut down coal by 2014, and now they're planning to accelerate that based on the fact that there's nobody left working in this province—I guess they figure they can shut down some of those units earlier. So the timetable for that has changed. But if you take that out of the system—6,500 megawatts, approximately, of coal-fired generation—and you don't proceed with a nuclear new build, there is a time where we have to look at refurbishing these reactors. Where are we going to get the base-dispatchable and baseload generation—we have to have baseload and we have to have dispatchable. Where are we going to get that if we don't proceed with new build in the province of Ontario?

Mr. Tom Mitchell: The answer to that question, just to be clear, as I've mentioned in my opening remarks, is not my responsibility or accountability. I'll just quickly remind you: My responsibility and accountability is for operating the assets that we have, that we hold in trust for the people of Ontario and maximizing the future value of those assets.

I think I've already earlier described that we have a number of processes under way to prepare for the future, which I think is our responsibility and accountability. I believe the questions you raise are best answered by the Ontario Power Authority, which has an accountability for system planning, and the Independent Electricity System Operator, which has a responsibility for making sure that the grid functions in a safe and reliable way.

What I can assure you, and I will assure you again, is that we will do everything that we need to do to support system plans and system operational parameters that are provided now, as we speak, for the plants that we're

operating today and into the future to meet the needs of the people of Ontario.

Mr. John Yakabuski: Into the future as long as we actually have nuclear plants, because if we don't build them or refurbish them, eventually you will have fewer assets to manage. I know that's beyond the point of where you or I will be sitting in either one of these chairs.

Have you had times this year where you've had to sell power at a negative price for many of your nuclear units to keep them operating?

Mr. Tom Mitchell: As I mentioned in my opening remarks, our large assets are regulated by the Ontario Energy Board in an open, public and transparent process that sets the rates that we receive for our nuclear generation assets and our large hydroelectric assets. They are not part of the market price. The only assets we have that are unregulated and operate on the market are our unregulated hydroelectric assets.

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I guess to perhaps expand a bit—I'm trying to be co-operative—there certainly have been times this year, with overall electricity demand being low due to economic conditions and to the fact that we've had a remarkably cool summer—I believe we've only had three days this year that have been above 30 degrees—that baseload generation at times, the quantity, has exceeded the demand. So what that means for OPG is that our fossil fuel stations have run at very low levels but ready. On August 14, when it got warm, we were running seven of our fossil units at Nanticoke to support the need, so they're ready.

We have been in situations where we've had to manoeuvre our nuclear units. We have not taken any offline but we have manoeuvred them down in power and we have spilled water out of our hydroelectric facilities. That's just a normal course of how one conducts those operations.

I want to again assure the committee that in doing any and all of those operations, our foremost concern is public safety and the reliability of the electricity system.

Mr. John Yakabuski: Thank you. We were aware that you're regulated on your nuclear, but I wanted to get that on the record because it is my understanding—I don't know if you can answer this for me or not—that Bruce has actually sold power at a negative at times this year to keep nuclear units running.

I guess my question with regard to that, and you've answered one of my next questions—if you had to spill, bypass hydroelectric production at times because of low demand, so we're just letting water go past our dams. We're getting no revenue out of it, no generation, just running it down the river. That's what happens when you have an economy that is in significant difficulties, of course, with the way that apparently the current government seems bent on operating this one. But that's political, so we're not going to go down that road. We're asking questions of a crown agency here.

So when we do that, when we have that negative pricing—we've had times when the actual market price

has been negative this year. The actual market price has been below zero, and I think we've got a chart here, where it is for the year. July: spot market price, 1.9 cents per kilowatt hour or \$1.90 a megawatt hour. If you look at the charts on those days, we actually have exports. We've been exporting a lot of power because we have an excess. We're generating; we're selling it. We sell it at the market price, correct?

When we sell it to a foreign agency, whether it be New York, Michigan, whatever, we're selling it at the market price but our consumers basically are paying the market price plus the provincial benefit—or we can call that a global adjustment as well. So our consumers are basically subsidizing the power purchases of Americans, mostly because that's where most of our interties are. Is that correct, as you understand it?

Mr. Tom Mitchell: Again, those are not areas of my responsibility. We sell our electricity, essentially dispatch it into the Independent Electricity System Operator, who manages the grid. They are the ones who control exports and imports and all the things that need to be done. What I can tell you is that they, along with our staff, I think are some of the unsung heroes of the electricity system in Ontario on a minute-by-minute basis of our balancing supply and demand. What I can tell you that applies directly to OPG is that a majority of our energy is rate-regulated through an open and transparent process, that those historically have been less than the spot market, and so we believe we have met what I would call my objective of supporting the increasingly low emission system—

Mr. John Yakabuski: When the economy was good, you were providing benefit—

Mr. Tom Mitchell: —and keeping rates low. What I would also tell you is that now, with market price so low, the reality for us is that our revenue stream has declined because we do sell a portion of our power at market rates. So we are also now providing an additional benefit to the consumers of Ontario because they are paying a low market price for our unregulated assets, and the impact of that financially for us is that it lowers the amount of return we provide to the province as being a crown—the fact that our balance sheet essentially is on the provincial balance sheet. So that portion that we can return from those operations has declined, but from a consumer's point of view, consumers are benefiting from a low market price.

I would also tell you that I believe we are probably the last organization that's actually being paid market price for a portion of our assets.

Mr. John Yakabuski: The IESO sets the market price. We understand that. But just like OPG, Hydro One, OPA or the OEB, they're all answerable to the Minister of Energy. They're all answerable to the government of Ontario. So I think it is important to know that the Ontario consumer is actually subsidizing our export market for electricity this year based on economic choices we've made in this province, which are just saddling our consumers with another bit of a bill.

I'm going to move on. How much time do I have?

The Chair (Mrs. Julia Munro): I'm just going to say thank you very much.

Mr. John Yakabuski: Apparently I'm moving out, not on.

The Chair (Mrs. Julia Munro): Now we'll move on. Mr. Hampton.

Mr. Howard Hampton: I want to thank all of the representatives from OPG for being here. I sense some frustration on your part. I want to ask you some questions about electricity planning, and you have to tell us that, while the Ontario Power Authority is responsible for that, the Ontario Power Authority is doing deals potentially in the several-billion-dollar range and yet they're not a reviewable agency. I think the people in Ontario would be shocked to know that there's an agency that can sign contracts for \$20 billion, \$30 billion, \$40 billion, \$50 billion and yet under the current system in Ontario you can't review them.

I also share your frustration that you have to make your electricity available to the Independent Electricity Systems Operator, and they may do all kinds of financial manoeuvres, and yet we're not allowed to call them for review. I think Ontarians would be shocked to know that under this current system that can happen in Ontario, that literally perhaps billions of dollars could be lost in electricity trading and they can't be called to account before this legislative body or any other legislative body. I think anyone looking at this would say that you couldn't design a more imperfect system than this if you're concerned about accountability to the public, accountability to the ratepayers and accountability to the taxpayers of Ontario. However, we'll get into more of that in another body in the weeks to come.

I wanted to ask you first of all about regulated assets. In the fall of 2008, I believe, you asked for a 14% rate increase at the Ontario Energy Board for your regulated assets. As I understand, your regulated assets are all of your nuclear facilities and your very big hydro plants. Is that right?

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Hon. Jake Epp: That's correct.

Mr. Howard Hampton: Everything else is market-based.

Mr. Tom Mitchell: It's market-based or we have contracts to—

Mr. Howard Hampton: Okay, that's fine.

Mr. Tom Mitchell: But, again, just for clarity, the businesses that were subject to OEB review were the nuclear assets and the large hydroelectric assets.

Mr. Howard Hampton: Good, yes.

So that was the fall of 2008. Is OPG planning on asking for another regulated-asset rate increase?

Hon. Jake Epp: Mr. Hampton, your characterization is correct up to the last—up to your question. Management has not come to the board with any requests, nor has the board made any decisions relative to your question. If there is anything further to add to that, either Tom or Donn can answer it.

It probably should be put on the record that, previously, in the old Ontario Hydro, it was the board—that is, not the OEB. The board of Ontario Hydro set the rate.

Mr. Howard Hampton: Yes.

Hon. Jake Epp: Talk about transparency. So that has all changed, and we're now in front of the OEB, so I believe that's a better public process.

But we've been through it once, and Donn Hanbidge and his team have largely been responsible for that. Maybe either Tom or Donn would answer that.

Mr. Tom Mitchell: Well, I think I just may, to add factually to the discussion—2008 was the first time that we had been through the Ontario Energy Board process. I found it a very disciplined and demanding process. I believe it was accountability, in every sense of the word, and I think we acquitted ourselves well in that review. We left with some learning. Actually, I would say there was some learning on both sides in terms of—because, obviously, our business is a big and complex business. We left with some things that we would certainly factor into the next proceeding.

Prior to that, our rates had been set on an interim basis in 2005, so I would just point out that there was a fairly long period of time between when our rates were last set and when we went back in 2008. I think that was what was reflected in some of the numbers that you used. Going forward, we believe we will probably be getting into, approximately, a two- or three-year cycle of rate submissions.

The setting of rates, in our sense, is highly dependent on a process that we're actually involved in right now, which is our business plan. We do long-range and short-range business planning. In terms of establishing rates, we need to know what our generation plan will be, which we're still finalizing. We need to know our cost structure relative to that, which we're still finalizing, because we haven't finalized our business plan or brought our business plan to the board. Then, obviously, another component of that is a separate question, which really gets back to rate of return on those assets. We were, I would say, very thoroughly reviewed on all of those aspects in our last hearing.

We are putting together the pieces of that, and it would be certainly premature, on our part, to draw any conclusions on that, but our expectation is that the OEB process will be initiated again next year.

Mr. Howard Hampton: So let me ask the question another way: Are you planning on asking for a rate increase on your regulated assets any time in 2009?

Mr. Tom Mitchell: In 2009? No.

Mr. Howard Hampton: Are you planning on asking for a rate increase on your regulated assets in 2010?

Mr. Tom Mitchell: We are planning on a rate submission in 2010, and, as I attempted to answer the question, it would be premature to decide what that request would be until we complete our plan.

Mr. Howard Hampton: So in 2010, there will likely be a submission.

Mr. Tom Mitchell: That's correct.

Mr. Howard Hampton: If I judge over the last six or seven years, in looking at your financial statements and some of the things you've already talked about in terms of certainly the regulated assets, you've got some very big costs and you have to cover those costs. So would it be fair to say you'll be asking for a rate increase?

Mr. Tom Mitchell: Those are your words, sir.

Mr. Howard Hampton: Okay. Well, will you be asking for a rate decrease on your regulated assets in 2010?

Mr. Tom Mitchell: Sir, I outlined to you the process. We're in the middle of a business planning process. It's premature to prejudge this. We take our responsibility to have safe, reliable, cost-effective generating assets for the people of Ontario seriously.

What I can tell you is that we have been focusing on improving the reliability of our units while ensuring safety and looking for many opportunities to reduce our costs. Until all of those factors are brought into play, I just cannot sit here and tell you what the answer of that is. It certainly would be premature to do that without discussing with my board.

Mr. Howard Hampton: Okay; I'll have a chance to return to this at some later date.

I want to ask you about the Niagara tunnel. In August 2006, with great fanfare and lots of television cameras, OPG participated in a—I guess you could call it a photo op, where the people of Ontario were told that the third hydro tunnel at Niagara Falls would be completed by 2010 and the tunnel would cost \$600 million. We are now on the verge of 2010 and the tunnel is only halfway complete, and the people of Ontario are now being told the tunnel will cost \$1.6 billion. How can that happen? How can OPG participate in a photo op with television cameras all there, where people are told this is going to take three years and it's going to cost \$600 million, and here we are three years later and the price has more than doubled? I'm told now it will be 2013. How does that happen?

Hon. Jake Epp: Mr. Hampton, I'll start answering that, and the reason is very simple: I as chairman of the board, the board members and management of that day, we take responsibility. Of course, now it's Tom, but I think we need to go back.

All the geotechnical work: I think this tunnel has been in Ontario's discussion—I don't want to put a date to it, but I understand it's around 20 years. So a lot of geotechnical work was done. Independent third parties were brought in for assessment. We used academic facilities in Ontario to further risk-test the geotechnical. And we believe, through the RFP process, we hired a very competent tunneller. So I think, from the due diligence point of view, that was done.

Secondly is the issue of, in a mining operation, and I guess as an old mines minister, can you ever be totally sure? Obviously, rock conditions were different than the geotechnical assessment gave us cause to believe. That all being said, we're still responsible.

That having been said, we had to go back with the tunneller, and Tom can answer those questions as to present status. But what I would put into the mix on your question and in my answer is that if you look at the LUEC over a 90- or 100-year period, you'll find that anything that is being built today, still on terms of not only green power but specifically hydroelectric power, it's a number that would be generally welcomed almost in any project. I'm not putting that forward as an excuse; I'm just giving it to you straight as to what happened.

Tom, maybe, can answer as to the present, if that's fine.

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Mr. Tom Mitchell: I would just add one correction. I believe that the initial cost was \$985 million.

Mr. Howard Hampton: The cost of the tunnel was \$600 million. The other work was related work; it wasn't specifically on the tunnel.

Mr. Tom Mitchell: Okay. I just wanted to make sure we clarified that.

Mr. Howard Hampton: Yes.

Hon. Jake Epp: The Strabag contract was \$600 million, originally.

Mr. Howard Hampton: Was \$600 million; that's right.

Mr. William Sheffield: The tunnelling contract was \$600 million. The total amount the board approved was \$985 million.

Mr. Howard Hampton: Yes. I don't disagree with you on that.

Mr. Tom Mitchell: You used a number that I believe is the total cost. I just want to make sure that—

Mr. Howard Hampton: It's \$1.6 billion.

Mr. Tom Mitchell: It's the total.

Mr. Howard Hampton: Yes.

Mr. Tom Mitchell: So just to make sure we're in apples and apples. But what I would tell you is, this is an extremely important project. How important was it or is it? On the ninth day of my job I was 4.7 kilometres underground, sitting on the tunnel-boring machine myself. So what I can tell you is, I had an opportunity to see the operation first-hand to get an idea of the complexities, of the magnitude of this. It is truly a very large and complex project—

Mr. Howard Hampton: Excuse me for a minute. I appreciate what you're saying but I've got some other important questions I want to ask.

Mr. Tom Mitchell: I just wanted to say, to me what occurred here is what you would expect in an organization that has a good project management focus and capability to do. We didn't wait to the end of this and say, "Oh, my gosh, we've gone over budget and over schedule." We have strict project controls. When we ran into differing rock conditions, we recognized it, we stopped, we evaluated the options, including stopping the project, changing contractors and all the different things. We have a competent contractor who has been focused on safety. We set a new schedule and price and we

publicly announced it in an open and transparent way. I am not sure what else you would expect us to do.

Mr. Howard Hampton: Could I ask you this? Strabag is the contractor. I'm told that when you do these boring projects, you're wise to custom-build the boring machine. Was this boring machine—Big Becky, I think you call it—custom-built for this job and this job alone?

Mr. Tom Mitchell: I believe so, yes.

Hon. Jake Epp: The answer is yes. There are different machines, different suppliers, but this machine specifically was related to this project, and as well was part of the price that OPG put into the contract.

Mr. Howard Hampton: Had this boring machine been used on any other projects, to your knowledge?

Hon. Jake Epp: To my understanding, it was brand new when it came to the Niagara site.

Mr. Howard Hampton: And was custom-designed for this project?

Hon. Jake Epp: I believe so.

Mr. Howard Hampton: One of the things I find—

Hon. Jake Epp: Excuse me, Mr. Hampton. If you take a look at the diameter of the cutter head, you had to custom-build because we did not have those kinds of dimensions in any other project. I personally went to the tunnel that was being built between Switzerland and Italy. I went to see a sewer project in Vienna, with very different rock conditions—actually, mud conditions. We'd looked pretty heavily at who could do this kind of project, and this machine was provided specifically for Ontario.

Mr. Howard Hampton: I hear the argument about unexpected rock conditions, but this is the third tunnel that has been bored in essentially the same place. Had these rock conditions not been encountered in the other tunnels, historically?

Hon. Jake Epp: I'm not an expert in tunnels, sir. Just because I've been in one doesn't make me an expert. But the first two tunnels, if you go back to the historical record, were not bored; they were blasted.

Mr. Howard Hampton: I understand, yes.

Hon. Jake Epp: I believe this one is at a different depth, and I can ask Tom to verify that.

Mr. Tom Mitchell: I think what I would say is that it obviously depends on the path that's traversed. One of the things that I would offer is that I think before we conclude on the machine in its efficacy, we should complete the mining operation, because these conditions that we encountered were on the downslope. We've now come through underneath the St. David's gorge. We did readjust our path of traverse and we have been in some rock conditions where we have substantially increased our rate of progress. But I would also point out that I'm always cautious about this because the rock conditions do change. We're going in and out of layers; those things undulate.

I think what we need to do at the end of this, and we will certainly do this, is look back as we do on any project and evaluate the lessons learned. I'm particularly interested in the geotechnical issues, not because we're

planning on other tunnels, but we are planning on doing other hydroelectric work that does require a very good understanding of geotechnical conditions. This is of a great deal of interest to me going forward—as well as completing this project.

The Chair (Mrs. Julia Munro): Thank you very much. We have to move on. Mr. Moridi.

Mr. Reza Moridi: I want to begin by thanking the Honourable Jake Epp and Mr. Mitchell for their presentation.

My question is for Mr. Mitchell. As you know, health and safety in every workplace is of prime importance to executives, and also it is very important to the public. In view of the fact that some tragedies have happened this summer in Ontario's waterways, what is OPG's plan to improve health and safety in its properties?

Mr. Tom Mitchell: Thank you very much. As I did state in my opening remarks, public safety is of paramount importance to us. We factor it into every activity, every task, every day. It's really job one.

In terms of public water safety, what we have done is several things. One is that we are very mindful of the impact of our operations on water conditions. When I toured the control areas for our water systems this summer, I got into a specific dialogue with our operators. I found them to be knowledgeable of the issues and very, very keenly aware of the impact that changing water levels could have on public safety. The other thing that we've done is we have spent a lot of time and effort over the last few years to increase signage, put in water barriers and make sure that when people are entering areas that are of risk, it's visually apparent.

Another partnership, this time with the OPP, is a campaign to make people aware of the fact that you need to be careful around our hydroelectric facilities. What we find is that there's some excellent fishing very close to our facilities and it attracts people. You may have seen an advertisement that we co-produced with the OPP that attempted to capture the hearts and minds of our people who enjoy fishing, to make sure that they're aware.

Also, if we do find people who are trespassing or not meeting our rules, we do inform the authorities and they respond. It is a subject that is extremely important to us. As I mentioned in my opening remarks, we have a large number of hydroelectric dams. We also have a very large number of water control structures. I'm not sure that everyone has an appreciation for the fact that we're following guidance provided to us by the Ministry of Natural Resources. We control 24 very large river systems in Ontario and we do it very well.

Mr. Reza Moridi: Thank you very much. If I may ask another question, Madam Chair. Just on the point of health and safety in the workplace and also from the public point of view, Mr. Mitchell, I know that there are stringent rules and regulations in relation to worker safety and also public safety with the nuclear facilities. I wonder if you would elaborate a bit about the OPG's plan in relation to Emergency Measures Ontario with regard to your nuclear facilities.

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Mr. Tom Mitchell: In regard to our nuclear facilities, we do closely coordinate with Emergency Management Ontario. We are part of the provincial response plan. We train with them, we drill with them, we hone our skills, and I am quite impressed with the level of cooperation that we have with Emergency Measures Ontario. I believe that's done in a way that reflects positively on our staff and on their staff and the professionalism that they bring to their work.

Mr. Reza Moridi: Thank you.

The Chair (Mrs. Julia Munro): Further questions? Mr. Ramsay?

Mr. David Ramsay: Thank you very much for your presentation today. You mentioned Hound Chute. I want to thank you very much for the work that OPG has done over the last few years there. As you know, we made decisions in the past and we went into watersheds and dammed up rivers in the old days because we didn't know any better. We didn't have the due regard for the environment that we appreciate today. I very much appreciate the incredible investment that you've made there, not only economic but environmental. Because of the extremes in the water levels over the years, it was very difficult for fish habitat and very difficult for property owners to manage their property.

Really, what we've come out of this with is a triple win. It's a win for you because you're certainly going to increase the generation capacity there in a very sustainable way—I appreciate seeing the picture in the handout today that you gave us. It's certainly a win for the property owners there who are very happy now, because with the new control system, that is going to be really excellent. And it's certainly a win for the environment along the Montreal River too. I very much appreciate that.

The thing I'd like to just talk about a little bit and ask you about is—and I know you come from the nuclear side, but it's very refreshing to see a renewed emphasis on the hydraulic side. I was wondering if you could just comment on some of the opportunities you would see on the hydraulic side, both in southern and northern Ontario.

Mr. Tom Mitchell: Thank you very much for your question. I appreciate the recognition of our staff. I think you're referring to the weir that we installed as part of the Hound Chute project. It's an amazing piece of technology, actually, and the feedback that I've gotten is that it is providing a better control of the water levels in that area.

I think overall, in the hydroelectric area, I've already outlined that we're obviously very interested in the Mattagami projects and the Montreal project that you refer to. We're looking forward to 44 megawatts of clean, renewable energy on the system. Those projects are going well. I actually toured all of them and I have a good sense of where we stand and the progress that's being made.

Also, we're very interested in the rest of the Mattagami system. Obviously, a partnership activity of

that is to establish an arrangement with the First Nations, which is proceeding well. That project has the potential for a capacity of an additional 450 megawatts. I don't want to guarantee that number, but that's what I would say appears to be the ballpark. That's a very exciting project for us.

In the west, Little Jackfish is another opportunity, and we're interested in potentially more.

I think you're right. As I said in my opening remarks, we have been given a part of the legacy of the hydroelectric construction and acquisition that occurred earlier in the last century. They are amazing assets. I was standing on a dam that was 104 years old, and it had been, I think, refurbished two or three times in its life, and it's running like a top. That's the other thing that we always need to keep in mind, and it has really been a thread that has run through many of the questions today. We do have assets that have value. It's not measured in days or weeks or months; it's measured in years and decades.

So it is very important to make sure that we do keep the long term in mind, and that perhaps with cool weather and economic conditions being what they are, it obviously allows us to do certain things, but we also have to look forward and make sure that we have an electrical system that will be there to support economic growth. I would just say, as a personal comment, that we always want to make sure that our economy is not limited by electricity.

Mr. David Ramsay: You mentioned economic growth, and that would be something I would certainly like to bring up and ask you about. These projects are very exciting for northern Ontario, but they're also very important for our economy. I would hope that we could do everything we could to maximize economic opportunity, as my colleague Mike Brown has said, for First Nations people, which I'm sure is all part of your discussions, but also the general economy in northern Ontario, because those jobs are very important. I think they become training opportunities too for a lot of our people in developing new skills. So anything you can do to maximize those opportunities would be obviously greatly appreciated as a great spill-over benefit, if you will.

Mr. Tom Mitchell: We see the economic opportunities that you described, and as I say, we're very sensitive as well to First Nations issues. I would also offer that the biomass projects, both on the wood and agricultural side, again, offer an exciting opportunity—early stages; I would classify that as almost in the incubation stage of seeing what's possible—and all of those things can have significant positive economic impact as part of us doing our job day to day.

Mr. David Ramsay: Thank you.

The Chair (Mrs. Julia Munro): Mr. Johnson.

Mr. Rick Johnson: Earlier, the member opposite informed us about the economic slowdown, which I very much appreciate hearing about, and I'm sure the rest of the world will appreciate knowing about it too. In light of

the challenging economic times and lower demand for electricity, can you tell us what OPG has been doing to reduce costs?

Mr. Tom Mitchell: Yes, I'd be happy to. We realize that it's important for us to look very diligently at our cost structures, and we've been doing that for a number of years. Just briefly, in 2008, really I would say before the current situation became apparent, we looked at our operating expenses and found about \$80 million worth of expenses that we could prudently remove from our budgets in 2009 and 2010, and we implemented those.

At the end of last year, given the economic conditions and particularly with our understanding that our revenues might be impacted with lower market prices, we set a very challenging target for our team to find an additional \$85 million worth of expenses to reduce in 2010. I'm happy to report today that as part of a very difficult business planning process, we found that money. Part of it is a recognition that coal closure represented an opportunity to reduce some of our operating expenses, as well as positively impact the ratepayer, and that was part of a business decision that we made around closing the four units that were announced last week. So we're ready, willing and able to make those types of decisions when they're in the company's best interests and in the interests of Ontario ratepayers.

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The other thing that we did this year is we set a target of a 20% reduction in discretionary expenditures. We tightened the belt. Again, I'm happy to report that my management team stepped up to the plate and is meeting that objective.

We've also been looking at any of the things that we can do to control our costs and reduce our expenditures—however, always being mindful of the fact that we have to operate safely and reliably. I can assure you that it's not about cutting corners; it's about looking for real savings. The coal closure would be the largest portion of that \$85 million. The rest of it has been through a whole long laundry list of very specific things that we went through as part of our business planning, and we're still looking.

Mr. Rick Johnson: Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on. Mr. Yakabuski?

Mr. John Yakabuski: I'm going to start by maintaining the flow that Mr. Ramsay began. I may dig a little deeper into that tunnel a little later, and then fuse back to the nuclear issue.

Anyway, you talked about hydroelectric opportunities and the importance of them. I just want to put things into perspective, because we know we have to tap the resources that we have. I just want to put the numbers into perspective.

What do you see as the realistic—you know, because we are talking about First Nations opportunities; we're talking about generation in other areas of the province; but, in general, I think we're talking about smaller generation, and a couple of bigger projects maybe. Can

you give us a realistic number with respect to how much hydroelectric capacity you see as being available in the province?

Mr. Tom Mitchell: I will attempt to give you an estimate based on, I would say, the current portfolio of things that we're investigating. I've mentioned, in north-western Ontario, we're actively working on projects to bring online 45 megawatts. We think the rest of the Mattagami might offer around 450, so that's 500. The size of Little Jackfish is still under discussion. I would say it's approximately in the 70- to 80-megawatt range. There are, I would say, other possibilities that tend to fall into that size of category.

Obviously, from our point of view, there are a number of things that have to come into play. This is what requires very close coordination with other agencies or organizations. We have to, again, partner with our First Nations, but we also need to make sure that Hydro One has the ability to hook up those locations. My understanding is that those discussions are under way. Certainly, we're not going to build a project unless we can get a wire to it. Obviously, there's the water side and there's the wire side.

I think my answer would be, we're talking about, I think, realistically, a time frame that would be in the next decade. It would be 500 to 550 megawatts, which, again, to put it in perspective, is the size of a Pickering reactor.

Mr. John Yakubuski: One.

Mr. Tom Mitchell: One, yes.

Mr. John Yakubuski: Thank you very much. I appreciate that. I mean, it's certainly not the kind of number that would replace or take up the shortfalls from the coal shutdown or anything like that, which we're talking 6,500 megawatts.

Now, you did talk about biomass. Currently, and I don't have that off the top of my head, I think the FIT biomass rate is approximately 13.5%. You're talking about burning wood and non-food agricultural products in some of your currently coal-fired plants. Can you do that profitably at that rate?

Mr. Tom Mitchell: There are three questions on biomass that need to be addressed: (1) Can we do it safely? (2) Is there an adequate supply of fuel? (3) Can it be done in a way that makes economic sense? All of that is bounded by that it has to fulfill the need to have that capacity. We think the need is ramp support for the system. It's a very similar need that our current coal-fired stations provide sometimes multiple times in a day, so we know the units are certainly quite capable of that. The fuel supply issues: There are processes under way to determine the quantities of the products that would be available and what those costs would be.

I don't think it would be wise to comment on a process that's under way, but that is certainly an issue that we're looking at. Again, we see it as a potential partnership with the new industry. Then, all of that has to be brought together into a business case, that we can receive a way of being recompensed for that.

I would say all of those would be a prerequisite to me taking a project to my board of directors for approval, which I have not done yet, but I can assure you we are actively looking at all of those aspects to put together such a business case.

Mr. John Yakubuski: There was a time frame where you sent out a request for expressions of interest on bio-mass procurement, I guess, or raw material for biomass production of power. I believe that was January 13 or so of this year. Where are we now with respect to that, because there doesn't seem to have been much said since then? I know you got a further directive indicating that it had to be Ontario, which is good, but where are we with that program because, as we move closer, now you're being told—by the way, the announcement last week for the earlier shutdown, because of the economic decisions, of the unneeded coal plants, did that come as a ministerial directive? Did you receive a ministerial directive or is that part of the ongoing plan?

Mr. Tom Mitchell: There are a number of questions in there, so I will attempt to answer—

Mr. John Yakubuski: Yes. One is where are we on the biomass, and because it's connected to the coal shutdown—

Mr. Tom Mitchell: Right. So, where are we on the biomass? There is a process under way. We had a very large expression of interest, which was quite heartening to us. There is a process under way which is continuing to evaluate those options. Our current focus on biomass is to put together a proposal, a project for Atikokan using wood, with a time frame yet to be fully fleshed out in terms of laying out a project schedule that would look like 2012. We're actively working through all of those various bits and pieces that I explained to be able to take to our board this year.

On the coal, we did not receive a ministerial directive. Let me step back and explain this process. The government has certainly announced its intentions in terms of coal fuel generation. We understand that. The strategy for moving to 2014 and the removal of coal from the system was a set of emission limits that were set in a stepwise fashion. We have organized our business plan and our operations around that. Then, what I would say is, two things happened. One is that the conditions changed; the projections for the amount of energy needed were revised. The electrical system operator, in discussions with that organization, indicated that the units would not be required. So what we did is we made a business decision to save company operational funds and to reduce costs to the ratepayer consistent with government policy in that direction.

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The other thing that transpired in that: I think we began to more fully appreciate the opportunities of biomass—and not just wood biomass but agricultural biomass. And I'll tell you, with my nuclear background I never thought I'd become such an advocate of this, but I have really been challenging my staff because it is a fundamental value: How do we maximize the value of

these assets for the people of Ontario? So I have been really pushing—and it hasn't been hard to push, because I think we've all recognized that this is an opportunity we want to fully vet. Assuming that it meets the system's needs, that it's a safe fuel supply and economically feasible, we are going to pursue that until we have firm and solid answers.

Hon. Jake Epp: If I might, what's becoming interesting in northern Ontario is the supply. You asked about supply and how you get supply. There are now companies in northern Ontario that are using the seaway and sending wood pellets, for exactly this purpose, to Great Britain. So I can't explain to you an export market or what this is going to do competitively to supply, but the story often is a little more complicated than just what appears on the surface.

Mr. John Yakabuski: That's why I asked the number, which I don't think you were able to provide, as to whether or not you feel that is adequate.

So the decision was something that OPG made as a part of its operational reviews, that this was something they could proceed with? So for all intents and purposes it was, from the minister's point of view, nothing but a shameless photo op?

Hon. Jake Epp: Maybe I can answer that. I'm not going to get into the politics of it, because I don't have a great background there. But let me put it this way: There was a business case made from management to the board. The board made the decision to endorse the business plan, which included the four units. As to what any other benefits there might be, I can only be responsible and am responsible, and the board is, for the decisions that we made.

If you look at directives, we do have a mandate from the government of Ontario, apart from our obligations under the Ontario Business Corporations Act, which is that we have to function as a financial corporation. If you take a look, they're all publicized on the Web. I don't think you'll find a directive relative to this one.

Mr. John Yakabuski: Okay. Because it was so soon, I don't know. I wanted to clarify that. So it is clear then that it's probably not a bad idea for the minister who wants to be mayor of Toronto to make that kind of announcement in Toronto. It's probably not a bad idea from a political point of view. But I'm just trying to flesh out what his real motivation was, because obviously you people have made the operational decision that it was possible. We're just trying to figure out the minister sometimes, and it's not easy.

Anyway, I don't know how much—I'm going to run out of time here. Let's go down to the tunnel.

Mr. David Ramsay: Let's give him a few more minutes.

Mr. John Yakabuski: I did have the opportunity to visit the tunnel, and I must say I was fascinated with the project going on there. Having said that, being fascinated still does not remove the right to ask questions with regard to its accounting, and I have a couple of questions.

So the price went from \$985 million to \$1.6 billion?

Hon. Jake Epp: Correct.

Mr. John Yakabuski: You have explained about the fact that the old tunnels ran at a different level, so the geological surveys didn't indicate exactly what we might encounter. But I am curious about the relationship between the contractor, Strabag, and the payer, the people of Ontario. Again, all of this is coming back to the rate base. None of the increase, from the \$985 million to the \$1.6 billion, is being borne by the contractor; it's going back to the people.

I'm not in a position to evaluate one contractor over another, but if the price was \$1.6 billion, would other contractors have been considered for the job? If the bid was \$600 million for the drilling part, and then you've got all the periphery stuff, but if the bid reflected what the price was—and maybe somebody else's bid did; I don't know—would we be looking at a different contractor on that job than the current one? Because we're talking about over half a billion dollars and how much of that is actually being paid out to Strabag and how much is for other things. If you can explain that to me.

Hon. Jake Epp: I'm going to have Tom do that, Mr. Yakabuski, other than to say, first of all in terms of Strabag—and I'm not reflecting on other bidders in the RFP process; I'm just reflecting on, do we have the contractor who can do the job? That's the board's responsibility to evaluate. There's no question that Strabag as a company—I'm not comparing them to anybody else—has worldwide experience that allows them and enables them to do the project.

In terms of the realignment of the direction, as well as the agreement that we now have in place, I'll turn to Tom and Donn, but I also have to remind you that we had a GBR system where we took a third party again to take a look at where responsibility lay for the ongoing development of the tunnel. And it is that as well that I think has to be put into consideration.

Mr. Tom Mitchell: Again, I would just offer that I think it's difficult, halfway through a project, to take a fulsome look at the entire project and decide if perhaps different choices could have been made. What we faced was the following: We, as part of good project management and controls, obviously detected that there were issues. We evaluated options, including stopping the job, which we did not think was in the best interests. We could have retendered the contract, which would have caused a very long delay, we believe. It's not clear that, given the location of the equipment and all of the other things that had already been put in place, that that would have provided a lower-cost option, so the option was to proceed.

I would just suggest that at the end of this project, like at the end of every other project that we've done, we will fully evaluate what are the lessons to be learned and try to make sure that particularly as we evaluate geotechnical risk, which is something we're going to face in all of our hydroelectric projects going forward, we clearly understand what were the lessons in terms of all the different

facets, including subsurface sampling, technical reviews, structure of contracts, contingencies and all those different aspects so that we can make sure that future projects do not have these types of results.

What I again can commit to you is that this a very important project and that we are looking forward, at the completion of this project, to having an asset that will provide value to the people of Ontario for 90 to 100 years.

The Chair (Mrs. Julia Munro): Thank you very much.

Hon. Jake Epp: Madam Chair, excuse me for interrupting. Mr. Sheffield, as a board member, wants to make a comment on this topic. Is that acceptable?

The Chair (Mrs. Julia Munro): Certainly.

Mr. William Sheffield: I sit on one of the committees that's up on the board. It's called the major projects committee. Our job is to provide oversight for projects like the Niagara tunnel. There are just a couple of things I'd like to say. One is, recognize that everybody had the same geotechnical information when they bid to begin with. So no one had the opportunity to have a second look and try halfway through. Everybody knew as much as we knew at the time that they bid. The board was heavily involved to make sure the RFP process was done very properly, because it was a very big project, and we ended up picking a contractor who had a lot of experience in the Alps rather than somebody who was from North America.

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I would say that while this has all been very painful for all of us, and hopefully we will end up with a very low cost, as we expect, compared to other projects—I've got my fingers crossed about the rest of the rock—there are so many times we were absolutely very pleased that we had a contractor with that experience. One of the reasons that things were slowed down is, they just went to the nth degree to make sure the overbreak did not create a safety problem. To have that kind of experience was very, very important; I would think everybody would have to agree. They have handled this very well, and they won't come out winning in the end in terms of profit, if that's what you're concerned about. They're sharing in the burden.

Mr. John Yakabuski: I'm only concerned about the question I asked, but thank you.

The Chair (Mrs. Julia Munro): Thank you very much. Mr. Hampton.

Mr. Howard Hampton: I just want to go back to this again and confirm a couple of things. You're saying that no lessons were learned from the two Niagara tunnels that were constructed earlier in terms of loose rock or rock that would shale and cave in from the roof. No lessons were learned from that such that there might be an expectation that this might happen in the construction of this tunnel? These conditions weren't encountered before?

Mr. Tom Mitchell: I think, as Mr. Epp has pointed out, Mr. Hampton, those tunnels were constructed in a

completely different mining method. This is a tunnel-boring machine; it's a 47-foot-diameter tunnel. It is actually an engineered 10.2-kilometre pipe made out of pre-stressed concrete. It needs to be built to very exacting dimensions.

Mr. Howard Hampton: With respect, you're giving me process. I'm not interested in process. I want to know about rock conditions.

Mr. Tom Mitchell: The subsurface conditions were evaluated. My understanding is that all of that information was shared with the bidders. I also understand that the bidders were allowed to collect their own information. The rock has not behaved as expected.

Hon. Jake Epp: If you're asking me specifically, Mr. Hampton, "Did any information on rock conditions other than geotechnical come to my attention or the board's?" the answer is no.

Mr. Howard Hampton: Can you tell me this: Did any of the other bids take into account the possibility or the prospect of rock conditions that might be unfavourable?

Mr. Tom Mitchell: I don't have that information.

Mr. Howard Hampton: Okay. I just want to confirm something else again: What was called Big Becky, the boring machine, was custom-designed for this project and this project alone?

Hon. Jake Epp: That's correct.

Mr. Howard Hampton: Okay. I want to ask you a couple of questions about hydro generation. I notice that you have a northeast plant group and a northwest plant group. I don't expect you to have these numbers at hand, but you might. I'm interested: What is the total hydro generating capacity of OPG in the northwest? If you don't have those numbers today, tomorrow would suffice. The second question: What is your total generating capacity in the northwest, in other words, also taking into account the thermal? The third question in respect to the northwest is, what's your surplus? I'm always bumping into OPG employees who say to me, "Man, are we ever sending a lot of water down the river without generating electricity," and we have a huge surplus. So I'm interested: What is your current surplus in the northwest?

I'm equally interested: What is your total hydro generating capacity in the northeast? I don't think I have to ask for the total generating capacity in the northeast, because I think it's all hydro. And what is your current surplus in the northeast? The last time I was in the northeast, the same people told me the same thing: You're running water down the river at an unbelievable rate because you've got a huge surplus of electricity.

The other question I'd like to ask—again, if you could provide those to the researcher—

Mr. Tom Mitchell: We will provide that. I do not have those specifics at my fingertips, but we will provide those.

Mr. Howard Hampton: Great.

Mr. Tom Mitchell: The only comment I would make on the surplus question: As I think you're aware, ob-

vously things fluctuate with minute-by-minute and day-by-day demands, so that's not—

Mr. Howard Hampton: Unfortunately, the northwest to the northeast, the demand keeps declining.

Mr. Tom Mitchell: So we will attempt to provide some kind of an estimate or average—

Mr. Howard Hampton: Yes. Since we're on this, you must be able to tell us what your generation costs are in the northwest too. I'd like to know: What are your hydro generation costs in the northwest, what are your thermal generation costs in the northwest and what are your hydro generation costs in the northeast a kilowatt hour? Or put it in megawatts; whatever.

Mr. Tom Mitchell: I'll turn to my chief financial officer—

Mr. Donn Hanbidge: We might have those.

Mr. Tom Mitchell: —who might have those or certainly will be able to provide them.

Mr. Howard Hampton: Okay, that would be good.

Mr. Donn Hanbidge: Actually, I don't have those numbers at my fingertips but we can provide them.

Mr. Howard Hampton: That's good. I've got a few more questions on biomass, and I specifically want to focus on Atikokan. Your spokespersons have said that wood fuel must come from sustainable harvest practices. You have said in different places in the province that you don't want to affect food production or food supply. One of your spokesmen said that you want your biomass from wood to come from sawdust, shavings, possibly treetops, and you've made the announcement about Atikokan.

Here's the problem I see: The sawmill immediately adjacent to Atikokan is shut down—it's not producing; three of the four sawmills in Thunder Bay are shut down—they're not producing; the sawmill in Ignace is shut down—it's not producing; the sawmill in Sioux Lookout is shut down—it's not producing; the sawmill in Kenora is shut down—it's not producing; the sawmill in Ear Falls is shut down—it's not producing; two paper machines have been shut down in Dryden; in the last four years I think 10 paper machines have been shut down in Thunder Bay; one pulp mill has been shut down in Thunder Bay. Where do you get the sawdust? Where do you get the waste, the wood tops, if wood isn't being harvested because no mills are operating?

Hon. Jake Epp: Possibly, with not Tom answering that first, I'm going ask Bill Sheffield to answer it, for no other reason than that he's operated some of the mills that you've identified.

Mr. William Sheffield: It's kind of a chicken-and-egg question. I spent a lot of my life in the forestry industry. I put myself back in the position that this is the opportunity to have a new revenue-generating source, and what it would do, I hope, would be that some of the mills that are shut down would become more economical and more likely to start up. If everybody can't supply, clearly we can't do anything. We can't create the demand for paper or the demand for pulp. That would be very nice, but we can't do that. But it would improve the competitive

position of every one of those facilities that could have an extra revenue stream.

Mr. Howard Hampton: Now let me take this one step further. There are some other pulp mills that wanted to look at biomass generation. I spoke to one of them, who said to me, "You know what? We've been snookered. AbitibiBowater in Fort Frances has gone around and literally signed everybody up. There's no room for us." They've literally tied up almost all of the available biomass west of Thunder Bay to feed their biomass generator at their pulp and paper mill in Fort Frances. So, as one of them said, "We're screwed."

Mr. William Sheffield: Well, I can't tell you about those details, although I did work for Abitibi before it was AbitibiBowater, and I'm living with some of the pain that's going with the process they're going through, as have a lot of my friends and former colleagues. What happened at the board—I'll just give you what I can tell you and Tom can add more detail if he wants.

When we started in this conversation about biomass, management and the board were aligned. We can't be a competitor for that material. In other words, we're not going to go in competition with the forestry people, because that's what some people were nervous about right away, that we were going to show up and were going to be—in fact, we said, "No, we need you to be the supplier. You have the system for harvesting and collection. That's where it should be." So, as Tom talked about partnerships, the process was to reach out to the people who now manage the forests and have them find a way to bring us the product we need. How they end up competing to do that, I'm not sure that we have the ability, even if we wanted, to influence it. Tom, would you like to add anything?

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Mr. Tom Mitchell: Yes. The only thing I would add is that we certainly are not looking to get into the fuel supply business. We want to encourage others to get into the fuel supply business. So we view our role in that to do the analyses that I have referred to and attempt to outline what would be the fuel energy requirements, and then look for innovative ways to stimulate, both on the wood side and on the agricultural side, the development of those fuel supplies.

We view it as an opportunity. I cannot personally verify all the statements you've attributed to our spokespersons but I'll take that at face value. I can tell you that we are very conscious of the fact that we don't want to damage industry; we want to encourage it.

Mr. Howard Hampton: Which brings me to the next iteration of the question. There are other companies that are not involved in biomass. They're producing specialty lumber, using cedar, red pine, white pine, which fetches a very high price when you're making kitchen cabinets, log cabins or whatever, or they're producing oriented strand-board, which again doesn't compete with pulp and paper because it uses a different species of tree.

Those folks are very worried, because they're saying, "Look, it's tough enough for us to survive. If we're going

to get into a world where you start chipping birch logs or poplar logs to burn, then that negatively affects our business.” Again, I hear the announcements, but when I talk to people who are actually in the forest industry, they’re saying, “Man, this is fraught with all kinds of problems. If you want to chip logs to feed into a biomass boiler, that can put our operation out of business.” Is that part of OPG’s plan, that you would actually take raw logs, chip them and run them through a biomass boiler?

Mr. Tom Mitchell: Again, Mr. Hampton, I believe the process we’ve engaged in is a request for interest to supply material. We want to find out what is the availability of products that could meet our needs.

Mr. Howard Hampton: One of the products—

The Chair (Mrs. Julia Munro): I’m sorry, Mr. Hampton, we are running out of time.

Mr. Howard Hampton: One of the products could be—somebody could say, “Well, hey, I’ll chip whole logs and ship them.” I’m asking you very directly: Is OPG going to consider that option? Will you take whole logs, chip them in the bush and burn them?

Mr. Tom Mitchell: You refer to OPG as doing physical operations in the woods.

Mr. Howard Hampton: No. You might retain a contractor. I just want to know—

The Chair (Mrs. Julia Munro): Excuse me, Mr. Hampton.

Mr. Howard Hampton: —is that conceptually on the table?

The Chair (Mrs. Julia Munro): Mr. Hampton, you’ve asked the question. We’re waiting for the answer. We have to move on. Would you continue, please, Mr. Mitchell?

Mr. Tom Mitchell: To my knowledge, we have not gotten into the details of the specific methodologies that would be used to produce the fuel. What we’ve asked for is: What fuel is available, in what quantities, at what price?

The Chair (Mrs. Julia Munro): Thank you very much, Mr. Johnson.

Mr. Rick Johnson: Mr. Mitchell, could you update the committee on the actions that OPG is taking to comply with the government’s latest procurement guidelines?

Mr. Tom Mitchell: Thank you very much for that question. We’re doing a lot. We have received the direction on procurement and we have put that in place. Again I want to stress, as I said in my opening remarks, that we have always had procurement rules. We have always striven to operate in accordance with best commercial practice. That has come through our benchmark. We have received the new directives on procurement, including expenses, and we are putting them into place. Specifically on the expense side, what I can tell you is that for all contracts that occurred after June 16, which is the effective date, we’ve put that in place.

I went a step further. I wrote to 272 vendors and asked them to meet the new requirements. What I can tell you is, they got the message. I’m still getting calls, letters and

e-mails, so I think what we’ve tried to do, as we try to do all the time, is to be responsive and set a high standard in that area.

In the area of consulting services, we are using a process that is Internet-based. I believe it’s used by other government organizations, where tenders are actually—that process is a public process, and that system is up and running. We have received the direction. We believe that we are meeting the spirit and intent of that. In places where the actual practices that have been outlined have some degree of specifics that we need to upgrade our processes and systems to be in exact alignment with, that’s under way.

Mr. Rick Johnson: Do you anticipate any additional costs to OPG because of these new rules?

Mr. Tom Mitchell: It’s hard for me to give a clear answer on that. As I said, we’ve had procurement processes in place, and they’re robust. Is there the possibility that there will be additional costs associated with these requirements? That’s a possibility, and I think we would be in a situation, probably further down the line, to evaluate that.

What I would say is, I believe that what has been requested of us makes sense. It’s sound. We’ve been doing a lot of work, particularly in the commodities area, to try to aggregate and get the best possible price through a competitive process with the vendors. There’s nothing in the direction of these new requirements that in my view isn’t consistent with that sound approach.

I might ask our chief financial officer, who does watch the pennies in the company, to maybe add any additional thoughts he might have.

Mr. Donn Hanbidge: The comment I would add, and Tom mentioned it, is that in general our principles and policies are consistent with those utilized by the government. It does require us to change slightly, but not all that significantly.

To the extent there are some additional costs as a result of some additional requirements, we certainly will manage those within our existing budgets.

Mr. Rick Johnson: Thank you.

The Chair (Mrs. Julia Munro): Mr. Moridi?

Mr. Reza Moridi: Mr. Mitchell, my question is about Pickering A, units 2 and 3. I believe there is a plan for the decommissioning of these units in the future. There is no plan for refurbishing them. Am I right? If I am, could you please give us some information about OPG’s plan for the decommissioning of these two units in the future?

Mr. Tom Mitchell: Yes, the decision was made to not put units 2 and 3 at the Pickering A station through a return-to-service project. I think that’s a prime example of our company using a very sound business decision-making process to make a decision. It was technically feasible to put those units through a return-to-service, but considering all of the uncertainties, particularly with the state of the steam generator systems, it was decided not to.

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What I can tell you about that project is that it is proceeding very, very well. We had a bit of a delay at the

beginning as we came to a realization with our regulator that we actually had to do an environmental assessment to defuel and dewater the reactors. Once we worked through that process successfully, what I can report to you is that units 2 and 3 are fully defuelled. Unit 2 is vacuum-dried—there's no water left in that plant—and unit 3 is scheduled to be vacuum-dried in six days.

So the project is proceeding well, on schedule and on budget, and it gives us confidence that the processes that we have been always planning for in terms of eventual decommissioning of units—just to be clear, we are moving these units to a safe shutdown state. It's what we call a guaranteed defuelled state. They will remain in that configuration, safe and buttoned up, until eventual decommissioning of the station.

Mr. Reza Moridi: I'm sure you have been in contact with the CNSC with regard to the licensing for decommissioning of these facilities. Has the process been started for getting a licence from the CNSC to decommission the facilities?

Mr. Tom Mitchell: We have not actually, I believe, filed for a decommissioning licence. That's not a requirement at this time. When we approach the time of decommissioning the station, the requirement would be to then come forward with a complete and overall plan for decommissioning the station. So what we are doing is, we are putting the units in a safe shutdown state, a safe storage state. That is a condition that is anticipated in decommissioning the plant.

Mr. Reza Moridi: May I ask another question, Madam Chair?

The Chair (Mrs. Julia Munro): Yes.

Mr. Reza Moridi: The decommissioning of nuclear facilities, we know, is a very costly, expensive exercise. Has the OPG and the former Ontario Hydro put any funds aside for decommissioning of your facilities in the future, including Pickering B, units 2 and 3?

Mr. Tom Mitchell: Yes, and I would ask our chief financial officer to provide you with some details about this. What I would say, in context, is that I believe Ontario has been extremely prudent in setting aside funds in trust for this purpose, and it will serve us well, but let me ask Donn to give you the details.

Mr. Donn Hanbidge: That's right. We have set aside a considerable amount of funds for both decommissioning and also the management of used fuel. In total, at the end of June, we had set aside \$9.7 billion.

Mr. Reza Moridi: Okay, thank you. The other question that just came to my mind is about the insurance of the nuclear facilities. The amount of insurance, at one point, was not really a considerable amount. Has the coverage been increased in recent years, or is there a plan to review the feasibility of having that limit of the insurance for nuclear facilities?

Mr. Tom Mitchell: That is an item that is currently at the federal level. There is a bill which I believe is at third reading that would establish new financial limits. What I can tell you is that we, as OPG, are prepared to meet those guarantees.

The Chair (Mrs. Julia Munro): Thank you very much. We'll move on. Mr. Martiniuk?

Mr. Gerry Martiniuk: Thank you very much, Mr. Epp and Mr. Mitchell, for your excellent presentation.

My question is, some people are saying there's a revolution going on in energy in North America in natural gas, with the growth of liquefied natural gas imports and the great new pools of gas by the extraction in the shales in North America. This will reduce the price of natural gas substantially. I would ask you your opinion as to the effect of this revolution on the asset-production mix in Canada and, in particular, your organization.

Hon. Jake Epp: I'm going to have Tom answer, but for a guy who comes from the gas industry way back when, I think we have to be a little careful. Right now, the price of gas is around \$2.80 a thou, as we used to call it, and that is the present situation. The one thing about gas one has to always keep in mind is volatility of price. If you look at shale, a lot of us are happy that there is more, that we can now, with new technology, get at shale and tight gas, as we call it.

That being said, you're not going to find a lot of activity at \$2.80. If you look at frontier gas, you're not going to find a lot of activity at \$2.80. In fact, you're not going to find a lot of drilling in the western sedimentary basin at that price. If you look at drill capacity and drill utilization today, you'll see it's way down. On average in the west, we would produce about 20,000 wells a year. I understand it's in single-digit thousands now. So supply does not necessarily mean development. That being said, you now get into the issue of supply availability for OPG. I'll turn that one over to Tom.

Mr. Tom Mitchell: What I would say on the supply side—and I think you have correctly mentioned all of the various sources of gas: Shale gas does appear to be in quite plentiful supply now and appears to have reduced at least the anticipated needs for LNG. Gas supplies would overall affect the price of electricity production from gas-fired sources, some of which we participate in and directly have.

I think what we're seeing now is that because of the low price of gas, gas from an economic dispatch point of view would be dispatched sooner in the stack of available assets and resources by the Independent Electricity System Operator, which would really be the organization to comment more directly on that, and the OPA as well on the system plan. What I would say is that they are certainly developments that we're keeping an eye on.

One thing I will tell you is that as we explore the potential for repowering coal units, it may well be that biomass supplemented with some additional gas co-firing could raise the total capacity output of those plants in certain circumstances, if the load and demand warranted. We'll keep an eye on that, but I think it only probably directly affects us through whatever complex interactions it has on market price. As I said, market price really only affects one segment of our business right now, which is unregulated hydro.

Mr. Gerry Martiniuk: Thank you.

The Chair (Mrs. Julia Munro): Mr. Yakabuski?

Mr. John Yakabuski: This is probably the last question. Just picking up on Mr. Martiniuk's question on gas, you're talking about the low price of gas, which is an encouragement to produce power by that source, but would it not be correct that most of the providers of gas power have long-term agreements with the OPA and, regardless of what the price of gas is, they're being paid to produce per megawatt? So they're actually the big beneficiaries of low gas prices, and the Ontario taxpayer and consumer, the ratepayer, is the one who is getting hosed because, with the provincial benefit, they're still getting their contract. The provincial benefit is basically going to the ratepayer. The gas providers are still getting paid as if the gas was \$4 or whatever price they assumed. They're getting paid not based on the price of gas; they're getting paid based on the price of the electricity, the contract for electricity. Isn't that normally the case?

Mr. Tom Mitchell: We don't have any details about the contractual arrangements.

Mr. John Yakabuski: We understand that, but most are power purchase agreements. What's the situation at Brighton Beach or Portlands? Those are your assets.

Mr. Tom Mitchell: We co-manage those assets and, yes, those are power purchase agreements.

Mr. John Yakabuski: Power purchase agreements. So that would be the normal course of events.

Mr. Tom Mitchell: I would assume it would be, but I just can't speak for others.

Mr. Donn Hanbidge: I just might add that I believe that a number of the contracts are based on the flow-through of gas prices, so there actually is not a profit to be made on the gas itself.

Mr. John Yakabuski: That's the case with yours at Portlands and Brighton?

Mr. Donn Hanbidge: It is.

Mr. John Yakabuski: Thank you.

Hon. Jake Epp: I think the only exceptions are what we call the first movers. Ontario started, for example, a plant which is not ours in Sarnia.

Mr. John Yakabuski: Thank you very much.

Interjection.

Mr. John Yakabuski: It's 12 o'clock.

The Chair (Mrs. Julia Munro): I would have given you—

Mr. Gerry Martiniuk: Unanimous consent, 10 more minutes.

Mr. John Yakabuski: I actually have a House leaders' meeting at 12.

Mr. Howard Hampton: I'll take all his time.

Mr. John Yakabuski: If Gerry has any more questions—but I have a House leaders' meeting I'm supposed to be at. Thank you very much.

The Chair (Mrs. Julia Munro): Well, thank you very much. This concludes our session. We certainly appreciate you being here today to give us your information and answer questions from the committee. Thank you.

This committee stands recessed until 1 p.m.

The committee recessed from 1200 to 1300.

SOCIETY OF ENERGY PROFESSIONALS

The Chair (Mrs. Julia Munro): Good afternoon, and welcome to the Standing Committee on Government Agencies. I see we have Rod Sheppard, the president of the Society of Energy Professionals. We have 30 minutes in total. We will divide the time remaining from your remarks amongst the members of the committee. So if you are ready, you may begin.

Mr. Rod Sheppard: Thank you, Madam Chair, and thank you, committee, for giving us the time to come and speak to you today. We felt it was important to be here during this review.

I'd like to introduce the people I've brought with me today. To my right, I have the local vice-president, one of our senior officials at OPG for our union, Mr. Lanny Totton; to my immediate left, Mr. Joe Fierro, also a senior representative of OPG; and to his left, Mr. Tony Kokus, also a senior representative of our union at OPG.

For those of you who don't know much about us, we are kind of a war baby. We've been around about 70 years. We were first born in the days of Ontario Hydro as a union and have gone through several iterations along the way till here we are in 2009. We represent about 7,500 professionals in the electricity sector. As you'll see in our presentation, we represent professionals at the Ontario Energy Board, the IESO, OPG, Hydro One, to name a few.

We're focused in the province of Ontario mainly on electricity sector organizations. We also represent people at Toronto Hydro—and Bruce Power; I should bring that up. I am a Bruce Power employee myself, so I should mention that. I get a quarter for every time I bring that up, so it's a good thing to do.

We've put together a presentation for you today, and I would encourage you to read it when you have a moment. It discusses in greater detail, and probably in more technical terms, the role and potential of Ontario Power Generation. But for the next few minutes, I want to focus on some very simple but topical issues and respond to any questions you might have with regard to it. It comes from having to go second and hearing some of the things we were going to say said first thing this morning, so we have to try and be a little different to keep your interest up.

The timing of the discussion about OPG's mandate and its role in the electricity sector couldn't be better. Our members pay very close attention to what happens in the industry, and they are concerned. They're concerned because the future seems, quite suddenly, uncertain. Uncertainty's not new to this sector, but we have been through a period of relative stability over the past few years in which the direction of the industry and OPG's future in it seemed to be established. The direction was not perfect by any means, and I will talk to you about the unrealized potential of OPG, but a steady course seemed to have been mapped out in the not-too-distant past. In a nutshell, there was a commitment to a future build in

Ontario's ample hydroelectric and nuclear resources, the development of more renewable generation.

To us, OPG's role in such an industry seemed obvious. OPG owns over half of the province's nuclear capacity and virtually all of the hydroelectric resources. Coal would obviously have given way to the integration of more renewable generation if we were to take the issue of greenhouse gas emissions seriously, but with the advantage of its procurement potential and the proximity of its assets to both transmission infrastructure and shoreline and offshore wind energy potential, OPG seemed well positioned as the platform for green energy, a green energy supply chain and green energy jobs here in the province of Ontario. As a large, sophisticated publicly owned corporation, employing a dedicated and highly skilled workforce, OPG would surely be central to a greener industry.

It seems obvious to us that OPG is well positioned to meet multiple critical public policy objectives, reducing greenhouse gas emissions, spawning green industry and green jobs here in Ontario, and providing Ontario ratepayers and Ontario industry with affordable electricity rates.

Recent announcements, however, suggest that we may have changed course or at least lost our sense of direction. Just last week, the early closure of four of OPG's coal plants was announced. Louder was the silence on the future of these public assets. For a number of years, the environmental benefits of either firing or coal-firing biomass at OPG's coal plants has been clear.

Much more can and should be done to expedite the use of these public assets for achieving climate change targets and, in the process, triggering the development of a significant biomass generation industry in Ontario, with tremendous benefits for Ontario's agricultural industry as well as our beleaguered forestry and manufacturing sectors.

While OPG has made a firmer commitment to wood biomass for the Atikokan generating station, it can and should take a leadership position on agricultural biomass to feed OPG's southern coal plant assets.

Also, recently it was announced that the effort to procure new-build nuclear generation was postponed. Louder still was the silence on refurbishment of existing nuclear assets. No serious plan to deal with mitigating global warming excludes a significant role for nuclear generation, and Ontario, which gets over half of its electricity and electrical energy from nuclear generation, cannot afford to exclude either. If we are serious about the issue of climate change here in Ontario, we need a nuclear plan and OPG needs to be central to that plan.

This is particularly the case if we ever hope to decarbonize ground transportation with the deployment of electric and plug-in hybrid technologies. It is also the case if we ever hope to recover a manufacturing base here in Ontario.

Increasingly, however, the future of nuclear power depends on government foresight and policy. Allowing the environmental attributes of nuclear power—i.e., its

emission-free status—to overcome its economic shortcomings, OPG is the ideal instrument for ensuring the affordability of nuclear power.

There is a backdrop to these announcements that is a further cause for concern and uncertainty. Firstly, these announcements are made against the backdrop of a very uncompromising commitment to new-build gas-fired generation. Thousands of megawatts of gas-fired capacity have been built in recent years, and there are literally thousands more megawatts of gas-fired generation planned.

Questions arise: Are we committed to emission-free nuclear power to provide most of our baseload energy, or are we not? Are committed to a future without fossil fuel generation, or are we not? Where does OPG sit in any of these scenarios?

Secondly, these announcements are made against the backdrop of a memorandum of understanding between the ministry and OPG that bars OPG from engaging in the development of renewable generation other than hydroelectric generation.

OPG is a publicly owned and government-controlled generator, and they can ensure that the right types of investment are made; that is, investments that advance the deployment of renewable generation.

In many respects, the timing couldn't be better for addressing this issue. Jurisdictions that rely largely on privatized generation are seeing large drops in investment in infrastructure. According to the international energy association, renewables and other capital-intensive projects, such as nuclear plants, are hit with the hardest of these economic circumstances. The IEA anticipates a drop of 38% in renewable energy investment worldwide this year. Similar studies out of the US illustrate the enormous challenge to investment in this industry rising out of financial crisis. If left to private sector investment strategies, only gas-fired generation would be built.

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Again, questions arise: Why doesn't the government use OPG as an instrument to develop a very significant wind industry here in Ontario? Would it not be perfectly consistent with climate change policy objectives? Would that not be perfectly consistent with the commitment to affordable energy for Ontario ratepayers? Would it also not be consistent with the commitment to build a green economy with green jobs?

In the midst of this uncertainty, we remain firm in our conviction that OPG plays a vital role in the economic and social well-being of Ontario. In fact, we want to leave you today not just with the appreciation of its value to Ontario as a government agency but with the understanding that it is an agency whose potential is still not fully realized.

We, as a union, do have some issues with regard to staffing at Ontario Power Generation. We are concerned about the demographic issue of 45% of the electricity sector staff expected to retire in the next decade. These numbers won't be new to anyone in this room. This is the world's demographics, as we know them. OPG, over the

past few years, has begun the process to hire young professionals to train for upcoming retirements, but progress is slow.

One area of staffing in which results are of concern is the training time to operationalize certified staff in categories such as nuclear authorized staff. That cycle is around a five-year cycle, and it concerns us that there aren't many already in the program to be able to pick up, as these retirees hit their early ages of retirement. OPG needs to staff for the future, not just for the present, to allow for timely transfer of knowledge. OPG must be given adequate funding so it can hire the necessary resources.

With regard to labour relations, we have good labour relations with OPG, and it continues to motivate our people. Our members, as professionals, have committed to high standards of quality and safety in doing their work. We noticed an awful lot of questions this morning around health and safety. We are part of the health and safety programs there, and we're quite proud of what we contribute to that, so we hope that will continue into the future, and we're going to make sure that it does.

The society is committed to helping OPG to be a successful company. Employee satisfaction surveys confirm some of the frustrations our members face. It's not always rosy; we do have issues around the amount of jurisdiction that we're losing to senior management people in the organization. We believe it's a concern and a violation of our collective agreement.

We do come here to reinforce that we support this organization. There were some questions this morning around their aboriginal programs. We cite that as our last example, that perhaps the most important example of the potential for OPG is the role that it can and does play in advancing public policy with respect to aboriginal participation in the industry.

The kinds of relationships that are currently being established by OPG with the aboriginal communities across Ontario are models for other industries and businesses. The practice of establishing equity partnerships with aboriginal communities on hydroelectric projects is a promising means of relieving the social and economic circumstances that constrain the promise and potential of aboriginal youth in Ontario.

You will see on the last page of our presentation that we've left some recommendations that we believe the committee should have a look at. We ask that:

- OPG's regulated assets should continue to be funded properly through the Ontario Energy Board rate hearings;

- enabler transmission for connection of OPG hydro projects treatment should be the same as wind enabler connections;

- OPG should be given a standard HESA to build new hydroelectric plants;

- OPG should be encouraged to build windmills and pumped storage stations to allow low-priced power at night, and generate at higher prices in the daytime;

- there be curtailment of wind at excess generation to avoid the spilling of water;

- OPG should be directed to continue with its biomass work;

- OPG should refurbish Pickering B and Darlington A;

- OPG should build a new nuclear plant at the Darlington site; and

- finally, OPG should deal with the demographic issues and try to better engage its employees.

With that, we'd be happy to answer any of your questions.

The Chair (Mrs. Julia Munro): Thank you very much. We have just about five minutes for each caucus. We'll begin with Mr. Brown.

Mr. Michael A. Brown: Thank you for coming. I appreciate that. I just have some questions that relate to—I don't understand some of the acronyms. Could you help me with "OPG should be given a standard HESA"? What is a HESA?

Mr. Rod Sheppard: I'll let Joe Fierro answer that.

Mr. Joe Fierro: A HESA is a hydroelectric energy supply agreement. It's terminology for that they get a contract with the OPA to do a project.

Mr. Michael A. Brown: Okay, so that's the contract with the OPA.

Mr. Joe Fierro: Yes. It's equivalent to a PPA. It's a power purchase agreement.

Mr. Michael A. Brown: Okay, that helps.

I represent a northern constituency with lots of opportunities, including wind power; I have the largest wind farm, I think, in Ontario at Prince township near Sault Ste. Marie. I also have, as you probably know, a great number of hydroelectric stations, some of which aren't operated by OPG but were at one time, and then sold to Brascan. I'm interested in the curtailment of wind generation electricity in favour of not spilling water—if you could explain that to me.

Mr. Joe Fierro: At the present time, wind gets paid about \$150 a megawatt and hydroelectric would get about \$37 a megawatt, if regulated. So the base economics would say you don't pay the wind guy \$150 when you could pay the hydroelectric guy \$37, because the difference is paid by the ratepayers of Ontario. It's an additional burden put on the taxpayers of Ontario when that energy isn't required.

Mr. Michael A. Brown: Couldn't that analogy be given for coal plants or any other kind of generation?

Mr. Joe Fierro: Coal—sure, you could, and so coal plants are normally running around \$47 a megawatt. Wind is about three times the price of coal. Gas is somewhere in the \$80 to \$90 a megawatt range. Coal is half the price, almost, of gas, and gas is twice the price of electricity. At some point you have to say how much extra you're willing for people to pay for that form of technology to generate electricity.

Mr. Michael A. Brown: But you're advocating that OPG gets into the wind farm business.

Mr. Joe Fierro: If you're going to have anyone do the wind, it would make sense to have hydroelectric and wind work together, because OPG can use that wind at nighttime to pump up its reservoirs and then use that water again, or generate it at less than the profit that some of the wind guys are making now.

Mr. Michael A. Brown: I'm aware of plants that do pump water back up behind the dams. Do you know how many there are, in OPG, I guess?

Mr. Joe Fierro: There's only one right now in the whole province, and that's at the Sir Adam Beck pump storage station, but there's capability of doing that at many more.

Mr. Michael A. Brown: Yes. I suspect in my constituency, actually, there would be the opportunity to do it at a great number of the relatively smaller ones, but still large-scale.

Your interest in biomass is also of interest to me. The pelletization of wood biomass, which could be an opportunity at Nanticoke or Lambton and could be provided for from the northern forests, as well as agriculture product—is your membership actively involved in providing some of the research or the background information we might need?

Mr. Rod Sheppard: I can certainly answer the first part of it, and I'll ask Tony Kokus to add some.

We've actually put some of our membership money, some of our hard-earned dues money, forward into testing and analysis of this, both from a wood side—the northern issue—and certainly on the agricultural side. We work very closely with the Ontario Federation of Agriculture at this point in time on that. But I'll let Tony answer the rest of the question.

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Mr. Tony Kokus: I really don't have anything to add.

Mr. Rod Sheppard: So yes, we have been engaged and we will continue to be.

Mr. Michael A. Brown: Okay. Rick.

The Chair (Mrs. Julia Munro): You have one minute.

Mr. Rick Johnson: Views on the nuclear—obviously in your recommendations you are supportive of that going forward. What kind of an impact will that have on your membership? And, just a comment on the impact of nuclear on the energy supply if the province chose to go forward with another plant.

Mr. Joe Fierro: A new nuclear plant would probably have about 1,000 people working at it. So that's 1,000 new people employed in the province in a hard-hit area once the plant's up and running, because the Oshawa area has been hit pretty hard. We'd be talking about between 2,000 and 4,000 construction jobs over an eight-to 10-year period, and the price of that electricity would still be half the price of wind, or still less than gas at its record-low prices before it comes back up, when gas demand goes back up. So it's still more economical than any of the options available right now. Obviously we'd have members who work at these plants, but these would

be people who work in the province, pay taxes to the province and live in the communities.

Mr. Rick Johnson: Thank you.

The Chair (Mrs. Julia Munro): Mr. Yakabuski.

Mr. John Yakabuski: So currently we're in a circumstance where the province, because it mandates so, takes every bit of wind that is available regardless of when or whether what demand is there. We take whatever wind is available of the 1,085 megawatts that is the capacity—averaging, let's say, 15 cents. We take it even if it means dumping and just letting water bypass our generating stations which is there for the taking, allowing that to bypass at something that costs less than four cents a kilowatt hour.

Mr. Joe Fierro: Yes.

Mr. John Yakabuski: That's currently what we do?

Mr. Joe Fierro: Yes.

Mr. John Yakabuski: Good economics.

Mr. Rod Sheppard: If I might add, Mr. Yakabuski: Two things have arisen in the last little while. One is the spilling of water and the other is the derating of nuclear units. Those are the two things that have happened.

Mr. John Yakabuski: The other thing I wanted to ask is about the new build. You people obviously would be significantly affected by the government's decision to suspend the procurement process. We couldn't get any firm answers because it's a crown corporation, and they're restricted in how they can answer us when OPG is asked the question. We're going ahead with the shut-down of fossil fuel; coal, anyway. That's the government's decision. Each one of these nuclear units has to be refurbished individually, and you can't shut them all down to refurbish them at once. So if we don't proceed with nuclear new build, where's the supply going to come from for baseload or dispatchable supplies within the next, let's say, eight years?

Mr. Joe Fierro: To maintain the same percentage of nuclear at 50%, you would have to at least refurbish the existing nuclear units and then, as the capacity of the province grows, you would have to potentially add new generation. So we would expect that the Pickering B and the Darlington A plants would be refurbished. Obviously, if it doesn't have to start until 2014, 2016 or 2018—it would happen in that cycle, but they would fix the first unit, then move to the second unit, they would sort of sequence the work, and you could end up with about a 10-year period where both plants are rehabbed over that period, and that would maintain the existing nuclear fleet. You'll find the same thing happening at Bruce, where they'll likely have to refurbish the Bruce B units because those are going to end up running out in the next 10 years or so anyway.

Mr. John Yakabuski: If we're unable to fire the coal plants with some other form that continues that capacity, we could have some significant shortages if demand goes back to where it's expected to be, correct?

Mr. Joe Fierro: It's unclear, because those units may not be knocked down and demolished. They'd still be there, and I'm assuming, hopefully, we can get some of

them to use biomass; maybe some of them have some gas support. I would hope that OPG would still have some use of those units to produce some electricity for the province.

Overall system planning: I can't tell what the growth is going to be like in five, 10, 15 years, but it could be a problem if we don't refurbish these units.

Mr. John Yakabuski: And build new.

Mr. Rod Sheppard: If I might be able to add, we sit around many evenings scratching our heads and trying to figure it out too. We've got as many unanswered questions as you just asked here on the same issue. So we're crystal-balling it. I think, if you looked at everybody up here, there's about 150 years of history in this organization and we're still struggling with what's happening here.

Mr. John Yakabuski: The government seems to be big on gas right now, but they're not talking too much about the CO₂ emissions from gas; they talk about green energy. But would you agree that as a rule we could say that, generally speaking, gas would have about 50% of the emissions that our current coal plants would have?

Mr. Joe Fierro: I believe the emissions are slightly less than 50% and the carbon base is about 50%. So it would produce about half the carbon/pollutants of cleaner coal that we use now, using some of our scrubbers and all that type of stuff, but at the same time it's twice the price.

Mr. John Yakabuski: But the emissions are not going away. We're actually producing about half the emissions. We're only cutting emissions in half by firing gas plants as opposed to some other form of cleaner energy, which is what new-build nuclear would provide.

Mr. Joe Fierro: There are some people who believe that the particulates emitted from gas could potentially be more dangerous than the larger particulates from coal because, when those get into people's lungs, those may cause more damage than larger particulates which the body gets rid of more easily.

The Chair (Mrs. Julia Munro): Thank you very much. Mr. Tabuns.

Mr. Peter Tabuns: Thank you for coming here today and thanks for the presentation. The thing I've always found extraordinarily strange is that the government has not used OPG to build renewable energy. My sense of the technical ability that exists at OPG—Hydro One, as a matter of fact—is that it's a very substantial asset for the province as a whole, and if it was given the opportunity to build more renewable power in this province, because in fact the hydroelectric facilities are one of the leading world examples of renewable technology, that you could really go to town. Do you, as an organization, have a sense as to why this government has not given OPG a mandate for developing new, non-hydro renewable power?

Mr. Joe Fierro: My sense is that I think during the last we'll say five years they were hoping to see OPG turn its act around and improve its performance. It's done that, and so I think it's only fair that its mandate now be expanded so that the new wind, if it has to be introduced

into the system, can be introduced at the lowest cost possible to allow the ratepayers of Ontario to not be saddled with even higher costs when you add profit on at these exorbitant rates that some of these individual private generators are going to get.

Mr. Peter Tabuns: Pump storage for use in peak period: Has your organization done an analysis of the potential in Ontario and the cost in Ontario?

Mr. Joe Fierro: Right now we have the one plant at Sir Adam Beck that has about a 200-megawatt capacity. Basically, at nighttime when the price is low, you use that to pump up the reservoir, and then in the daytime, when the price is higher, you feed it to the system, so you take advantage of the low price.

We think there are in the neighbourhood of at least 1,000 megawatts of pump storage available within the province within the next five to 15 years that could be taken advantage of. What that will do is increase demand at night, when there's available power, and then in the daytime produce clean hydroelectric power that wasn't available because the water wasn't there if you didn't do this.

Mr. Peter Tabuns: What do you think that power could be produced at per kilowatt hour?

Mr. Joe Fierro: The average price for hydroelectric is about \$37 a megawatt. Now, with the pump storage it would be more expensive because you need to take the power and pump it. My guess is that it would be \$60 to \$70 a megawatt, which is still cheaper than gas, and half the price of wind.

Mr. Peter Tabuns: Okay. One of my concerns about gas-fired power plants—I have a number—is that we live in a world of finite resources, and some who have huge concerns say that we will reach the peak of gas and oil production at some time in the next five to 10 years, and some say 20 to 30 years. But we're putting in hundreds of millions of dollars' worth of infrastructure for which the fuel may become increasingly scarce in the decades to come. Has the society done an analysis of that issue and its potential impact on electricity costs in this province?

1330

Mr. Rod Sheppard: I can answer the first part, and I'll turn it over to anybody else who wants it. Part of your question, Peter—the concern we have is that gas-fired stations are being put in places so that transmission doesn't have to be created. We have a concern about that because that doesn't allow for a lot of flexibility.

We're new to this. We don't represent anybody in the gas. It's become an impact in the last two years and we're starting to look at it. We're trying to figure it out. We know it's not a good backup to being baseload; we know that much about it. We probably know some more things, but at this point in time, we're still trying to figure out a way around its impact. We're more comfortable with wind and pump storage being partnered together than we are in anything around gas.

Does anybody else want to pick up the question?

Mr. Joe Fierro: I'll just add one more thing. The part that people have to realize is that the greater use of natural gas to generate electricity will mean additional pressures in the wintertime on natural gas when it's used for heating. That can only mean prices going up for the natural gas users who use that to heat their homes, because there's going to be more competition for that natural gas, and there's only a finite supply through the pipelines to get it here. So it not only would lead to higher gas prices generating electricity, but it would also lead to natural gas prices being higher to heat homes.

The Chair (Mrs. Julia Munro): Thank you very much. That concludes the time we have. We appreciate your being here today.

Mr. Rod Sheppard: Thank you very much.

DENNIS BROWN

The Chair (Mrs. Julia Munro): I'd now like to call on the mayor of Atikokan, Dennis Brown. Good afternoon, and welcome to the committee, Mr. Brown. You have 30 minutes. You may take time to make a statement of your own, and then we'll divide the time around the table. Please begin.

Mr. Dennis Brown: First of all, I want to thank the committee for inviting me to make this presentation today. It's a great honour for me to be able to do so. I have a handout that I think everyone has a copy of. I won't read it through it all, but I would like to make some important points about OPG and the asset in our community and how important it is.

As the beginning part indicates, I've been fortunate enough to have been a resident of Atikokan for the past 43 years, and I've been lucky enough to be mayor for the past 12 years. I thank you for the opportunity to speak before you and to share with you the great attributes of our community, how we got where we are and where we hope to go in the future. I'd also like to emphasize the importance of Ontario Power Generation to not only Atikokan, but all of northwestern Ontario. I want to especially refer to the OPG plant in Atikokan.

OPG is presently Atikokan's leading employer and our community's greatest economic generator. The company is responsible for \$1.7 million in annual local purchases and pays more than \$2 million in municipal taxes. OPG is responsible for about a third of the taxes our community collects each year. It is by far our largest taxpayer. At one time when the two mills were going we had larger employers, but right now OPG is right up there, being one of the larger employers as well.

We have to fight vigorously to preserve every job in our fragile economy in Atikokan, and it's important to keep the magnitude of each job loss in perspective. The jobs at OPG are skilled and generate an above-average income of \$77,778. The station's annual payroll is about \$7 million. Using the regional multiplier of 1.75, the Atikokan generating station's contribution to our local economy is over \$15 million a year. This is huge.

When we look at the proportionality of community economies, the loss of one job at the Atikokan generating station has an economic significance equal to the loss of well over \$104 million in the Toronto economy, and the closure of the plant has an impact equivalent to the loss of \$9.4 billion in the Toronto economy. What kind of reaction would you get if one decision of the provincial government extracted \$9.4 billion from the Toronto economy?

The Atikokan generating station is important to our community and an integral economic driver for our region as well as serving as a base generator of, as Mr. Yakabuski referred to, dispatchable power for northwestern Ontario. It's essential that the two plants, Atikokan and Thunder Bay, are the base generators of power in northwestern Ontario and, as such, they are very important. One other point I would like to make on that is that 70% of the demand for power in northwestern Ontario, under normal conditions, was for the industrial sector. So we have to have the power there when industry needs it.

On page 2, just a little bit about the assets: The existing infrastructure of the Atikokan generating station was originally built in the late 1970s and early 1980s at a cost of \$700 million and has been well maintained over the years. We feel that its value now is probably worth \$1 billion. With the existing transmission and transportation infrastructure, trained staff, fuel supply and a very supportive community, the recent biomass initiative is a catalyst for a bigger and better tomorrow in Atikokan and northwestern Ontario, and thus all of Ontario. Both the McGuinty government and Ontario Power Generation should be commended for their efforts to find another source of fuel power for the Atikokan station and other coal plants across the province in order to make use of these valuable assets. We look forward to this switch to wood pellets at the Atikokan OPG site in 2012.

The new fuel supply, based on wood pellets, could be the foundation for a new made-in-Ontario industry. It could transform the ailing forest industry, as you've heard earlier today, and see new uses of the forest for such initiatives as bio-refining. Biomass is a great green opportunity and a great stimulus for Ontario's future.

What about the OPG employees in Atikokan? According to the 2006 census, our Atikokan population was about 3,293 people. Over the years, many residents of Atikokan were able to remain in our community because they worked for OPG. As well, many people from outside our community have moved to Atikokan to work at the generating station. OPG's 90-plus employees are highly skilled engineers and technical experts, tradespeople, managers and administrators. They are not only economic generators in their own right; their impact on the community goes far beyond this. They are very important to the social fabric in our community. They serve the community well by coaching hockey, baseball and other sports. They're active on boards, they get involved as parent volunteers at school events and some are even volunteer firefighters. Our community would be

far less without these great people. They contribute substantially to the well-being of Atikokan and we thank them immensely for that.

Now a word about OPG as a good corporate citizen: OPG takes the lead when it comes to being an outstanding corporate citizenship. This is particularly important for a small community like ours. The company has for many years supported such organizations as our hospital, our cultural programs and our youth programs. In fact, over the past three years OPG has provided just under \$150,000 to grassroots and broader community initiatives. Our hospital alone has received about \$44,000 from OPG since 2001 for equipment that helps us serve OPG's emergency needs and also provides enhanced care to the people in our area. OPG has contributed to numerous community projects like the elevator and handicapped access to our library. Our regional college also gets OPG's support, as do other organizations—all extremely important to our community, particularly as we work to overcome our current economic challenges.

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Let me share a quick story: One of our former major companies, Atikokan Forest Products, used to sponsor our Canada Day celebrations. When they went out of business, OPG stepped up and helped us. This came at a time when many of the folks in our community were out of work because of forest industry closures. Pride in our country is something we all share, and I can tell you that the support provided by OPG on Canada Day made the kids feel like part of a great celebration. This is what good companies do when communities face difficult times.

The next section is just on the history of Atikokan. I don't think I want to go through it word by word, but we have Quetico park there that, this year, is celebrating its 100th anniversary. Atikokan itself is 110 years old, so they're kind of synonymous.

As you know, we rely on mining and forestry. On page 3, I talk about how Steep Rock Iron Mines and Caland mines were there from the late 1940s until 1980, when they closed. We lost 1,100 jobs. Right now, there's a revival in mining. We have a company, Brett Resources, that's very involved in gold mining around Atikokan, and we're hopeful that another mine will take the place of these two mines that closed. We note that Ontario Hydro came onboard at a time when those mines closed, and that certainly has helped. Atikokan Generating Station will be celebrating its 25th anniversary next year, in 2010.

A little bit about the economy: The people of Atikokan openly embrace the future. We're in no way a not-in-my-backyard community. We've seen many ups and downs, and we've endured a history of negative economic change, but we've always remained optimistic, rose to the challenge and worked toward a better future. Over the years, we have tried to work in a positive manner with all senior levels of government.

Our economy today is based on forestry, Ontario Power Generation's Atikokan Generating Station, gov-

ernment services, retail services, tourism and a mixture of light manufacturing businesses.

Two recent leading employers were Atikokan Forest Products, a lumber and woodchip mill, and FibraTech Manufacturing, a particle board plant. These two companies utilized the abundant natural resources in the area. Both are now closed, but I'm pleased to say the former FibraTech plant has been recently purchased by Mr. Ed Fukushima and a group from Thunder Bay and is being converted, as we speak, to make wood pellets.

The retail sector is the third-largest employer in Atikokan. We have a number of stores, shops and restaurants catering to the residents of Atikokan as well as visitors.

The outdoors and wildlife are a central theme for those who live there, and our unique wilderness setting has resulted in canoe and paddle manufacturers becoming established in Atikokan and selling their products internationally. We have Souris River Canoes, Fletcher Canoes and XY Company, to name three of these businesses.

Now, as we move forward to new opportunities, our municipal council and our energy committee for the community wholeheartedly stand behind the biomass program. Our community enthusiastically supports the work being done in this regard, and we are actively exploring new opportunities in renewable energy sources. Biomass is a new green technology for Ontario, and we see this as a bright future for our community and for all of northwestern Ontario.

We took great pride in the government's selection of Atikokan for its biomass research centre. We were strong proponents of the work of this organization and the individual research studies that are being conducted. This has extended to positioning northwestern Ontario as a growing bio-energy, academic and research community, with the strength of knowledge available at Lakehead University and Confederation College in Thunder Bay.

Conversion of the Atikokan Generating Station to biomass supports the government's drive toward renewable energy and its climate change benefits. It will not only ensure the stability of the economy of our community; it will open new opportunities for our forest industry to provide a sustainable supply of fuel. We're right in the heart of the best forests in the country and probably in the world. The made-in-Ontario opportunities that can and will flow from this conversion are huge.

I understand that the Ministry of Natural Resources had a great response to its request for expressions of interest for fuel supply and transportation services, and OPG's request for the supply and transportation of biomass fuel also received an excellent response. They generated a great deal of interest in northwestern Ontario and certainly raised the profile of biomass as a part of our province's future. As I said, the company that purchased the FIBRA TECH operation is now taking steps to convert the plant to a wood-pelletizing plant.

On the last page: We're just a short haul from the port of Thunder Bay—we're two hours away—and that opens

opportunities to market biomass pellets for distribution internationally through the Great Lakes ports and via the St. Lawrence Seaway. There is a business opportunity here in the north for biomass.

In conclusion, I have had the pleasure of discussing the biomass opportunity with Deputy Premier Smitherman, Minister Cansfield and Minister Gravelle, and our MPP, Bill Mauro, has certainly been involved. We most certainly appreciate their support for the biomass initiatives. Biomass is consistent with northern Ontario development objectives.

I encourage the government and Ontario Power Generation to keep proceeding with the necessary steps to move conversion of the Atikokan plant forward as Ontario's first biomass electricity producer. It will not only be protecting our community; it will help a struggling forest sector add more forestry jobs—harvesting wood, making pellets—and it will allow for a secure, reliable source of power in northwestern Ontario for new mines that are scheduled to begin in the days ahead.

OPG helps keep our community thriving and on the map. I encourage all members to support the development of this new renewable energy industry. It is good for Atikokan, good for the north, good for Ontario and good for the planet.

The Chair (Mrs. Julia Munro): Thank you very much, and we'll begin our questions. Mr. Yakabuski?

Mr. John Yakabuski: Thank you very much, Madam Chair. Dennis, good to see you again. I've had the pleasure of being in your community at least a couple of times, and also touring the generation plant up at Atikokan.

From what I understand, technically, they've done all the testing. There's no question that Atikokan has proven to be suitable to produce power from biomass. Is that correct?

Mr. Dennis Brown: That's the way I understand it. They've had 100% tests burning there, and it's been successful.

Mr. John Yakabuski: Very successful.

Mr. Dennis Brown: Yes.

Mr. John Yakabuski: And right now, on most days, quite frankly that plant is not operating.

Mr. Dennis Brown: With the way the economic conditions are right now, it's a challenge. But remember when we talked about it being necessary for base generation, for dispatchable power, for voltage line regulation and that type of thing?

Mr. John Yakabuski: Absolutely. So we understand when they're not burning coal for their stated reasons, but there is certainly great potential for it to be used to produce power from the burning of biomass. We've technically shown that that can happen. So the question is just whether or not there's the will, and also if there is the determination that they can supply the raw fibre.

The forestry industry, in order to produce the waste product—the sawdust, the tops, the branches, the chips, whatever—we've got to be able to produce the saw logs as well, because they're not going to operate sawmills to

produce waste product; they're going to operate sawmills to produce saw logs and high-grade product. I find it interesting that the current government can spend a quarter of a billion dollars buying a video game design business, but we're not making the investments in efficiencies into our current fleet of sawmills. If our sawmills were more efficient, both from a power usage point of view and a productivity point of view, we recognize we'd lose some employees but we'd actually at least maintain our sawmill industry. If we were investing that kind of money in our sawmills, we'd be in a much more competitive position. Why do you think they just seem to be allowing our sawmill business to just disappear?

1350

Mr. Dennis Brown: The way I understand the major problem, John, is that basically the market isn't there for the product that the sawmills produce. I know there can probably be more efficiencies, but if they can't sell the product, then that's the problem.

Mr. John Yakabuski: Because they can't compete.

Mr. Dennis Brown: The sawmill in Atikokan is dependent on the housing industry in the United States, and that's something else. As the forest industry changes and the market changes to value-added and so on, that takes time in the transition, but right now, the mill that's out there that has 225 jobs is dependent on the housing industry in the United States.

Mr. John Yakabuski: We recognize that demand is not where it was, but wouldn't it be a golden opportunity to try to improve the efficiencies and productivity of those mills at a time when the economy is not right? This would be a good time to be prepared when those housing starts do begin to grow again in the United States; we know we're dependent on that market. We'd be in a much better position to have our sawmill industries successful, which allow our sawmill industries, then, to be involved—

Mr. David Ramsay: Madam Chair, can I ask a question? This has nothing to do with OPG. We're not talking about forestry here—

Mr. John Yakabuski: It's got everything to do with it.

Mr. David Ramsay: The mayor's not an expert in forestry. This has gone way off course here.

Mr. John Yakabuski: We're talking about biomass.

The Chair (Mrs. Julia Munro): No. I think, though, that I'll allow the question. We have very little time. We'll just continue. We have very little time left.

Mr. John Yakabuski: Yes, thank you, Chair. I don't want to lose any time.

If we were investing in doing that, we'd be doing a service to our sawmill industry which will, in turn, allow us to produce the biomass needed to fuel Atikokan, should the government decide to go that way.

Mr. Dennis Brown: I suppose that there's always room for improvement, John, but I think it's a matter of priorities and where the government sees its priorities

are. There are challenges with a lot of the sawmills; I agree with you there. It's not an easy answer.

Mr. John Yakabuski: No. Thanks, Dennis.

The Chair (Mrs. Julia Munro): Mr. Tabuns.

Mr. Peter Tabuns: Mayor Brown, thanks very much for coming down and addressing the committee today. I'm interested in another potential generating asset in your community, and that's the Steep Rock Iron Mines open pit. I understand that there was an assessment done of that as a pump storage unit. From the nodding of your head, I think I read the right article. Can you tell me where things stand with that and what the capacity would be for pump storage at that former mine?

Mr. Dennis Brown: That has been talked about but it really hasn't gone anywhere, Peter. I think there's a huge capacity there if it were to come into fruition, bringing the water from the mine, pump it up and then come down and create the power—yes. The way I see it, it would probably take a private sector individual to come forward and look at it. There's nothing concrete on that yet. It's kind of out there. It's one of those projects that's out there. It's not moving forward very fast.

Mr. Peter Tabuns: Right. Okay. Is the town itself involved in the discussions with OPG or anyone else? Are there discussions going on at the moment?

Mr. Dennis Brown: Garry McKinnon, the economic development officer, serves on an energy committee. We've talked about it, but I haven't seen anything concrete on that. We have maybe thrown the idea out, but that's as far as it has gone.

Mr. Peter Tabuns: Following on an earlier commentary and your comments about saw logs, is there enough waste wood particle in your region to feed this power plant if it were to run on wood pellets alone?

Mr. Dennis Brown: If it was strictly on waste material, right now, if they were to start up tomorrow, that would be a challenge because, as Howard mentioned, the mills aren't functioning. But I think that in the province of Ontario, and this is something that I've heard Minister Cansfield and Minister Gravelle now talk about, the way the wood is utilized needs to change or probably is going to change in the days ahead. There are consultations going on on that.

We have, as I mentioned, two operations that have wood allocated, and they've been closed for two years, but if there are other groups out there that want to make use of that wood, there should be some mechanism or some way of them accessing that fibre so we wouldn't be in the situation we're in now. I think those discussions are taking place, and I see this consultation happening this fall up in the north and right across the province.

Mr. Peter Tabuns: Okay. I'm satisfied. Thank you.

The Chair (Mrs. Julia Munro): Mr. Ramsay.

Mr. David Ramsay: Mayor Brown, how are you doing?

Mr. Dennis Brown: Oh, pretty good, Dave.

Mr. David Ramsay: It's nice to see you, Dennis. I won't mention how many years we've known each other.

Mr. Dennis Brown: A long time, isn't it?

Mr. David Ramsay: I don't want to date ourselves, but I think your mandate's been longer than mine.

Mr. Dennis Brown: Twelve years.

Mr. David Ramsay: I think you've been very successful there, and I've always appreciated your hospitality in Atikokan. You've offered tremendous leadership through some very challenging times. Good for you for hanging in there and sticking in there. I was very pleased to be able to help the transition of the OPG plant there to get to the experimental stage and I'm so pleased that it's working. I think now with climate change, which we weren't thinking about three or four years ago, everything sort of comes together and we're looking at a nice carbon-neutral fuel source there.

I was going to ask basically the same question that Peter had asked: where the fuel source would come from for this, especially with right now the downturn of forestry. But one thing we're starting to develop too—and I first saw that about six years ago in flying over your area and seeing all the slash fires in the fall. I had asked officials at MNR at the time, first of all because I don't see these in the northeast like this, "What are all those plumes of smoke doing up there?" They were telling me how they burned the slash. They'd piled it up and had these huge slash fires and they looked like huge mushroom clouds going hundreds and hundreds of feet in the air. I was thinking about all the energy waste and everything and got officials starting to think about why we aren't harvesting the residual waste of a forestry operation, a cutting operation that we refer to in the north as slash.

There's a lot of opportunity there, again once the industry gets going again, which it will when Americans start to buy the houses. In fact, in places like Sweden they will use the slash exclusively, plus trunks, which I hadn't thought about—I mean the stumps of the trees left over. They extract the stumps to keep these community heating systems going, so wood fuel boilers that basically heat industry and whole towns in Sweden. So there is a lot of opportunity there. You sit in the middle of that wood basket there, and I think there will be a lot of opportunity.

To answer some of the questions that my colleague Mr. Yakabuski was asking you: Unfortunately many of the companies are in receivership situations across northern Ontario and aren't even in a position to come to government for some assistance right now. That's how bad it has gotten.

Mr. John Yakabuski: It's a shame you let it get that far.

Mr. David Ramsay: It was sad that the American housing market collapsed the way it did and that we are very dependent on that market, but the Americans will be building houses again and that's going to come back. It may be a partial source—the wood chips coming from sawmill operations, where some of it could be diverted into wood pellets, as we look at other opportunities too.

So in the medium and long term I'm very optimistic about forestry. We're going to have to grow more trees and harvest more trees—

Mr. John Yakabuski: What's that got to do with OPG?

Mr. David Ramsay: —and that's going to be good for the OPG plant in Atikokan, so I think it's great. As part of the government, we're there to help you and help with that restructuring, but we'll get through it. Thank you.

The Chair (Mrs. Julia Munro): Okay. Anyone else? Mr. Brown?

Mr. Michael A. Brown: Maybe Mr. Brown wants to answer.

The Chair (Mrs. Julia Munro): Oh, sorry.

Mr. Dennis Brown: I just wanted to thank Mr. Ramsay for his comments. I also want to thank him for the way he tried to help our community when he was Minister of Natural Resources and helped us through this transition, as you indicated. We appreciate that, David. Thank you.

1400

Mr. David Ramsay: Thanks, Dennis.

The Chair (Mrs. Julia Munro): A final comment?

Mr. Michael A. Brown: I just wanted to thank Mayor Brown for coming. I've enjoyed his hospitality in Atikokan and enjoyed the town over the years.

I just wanted to point out that there are 190,000 unemployed forest workers in the US, there are 72 pulp and paper mills down and there are innumerable sawmills down. So when the mayor correctly points out that most of the difficulty we are having these days is an issue of demand for product, he is absolutely correct. I share my colleague and the mayor's view that things will get brighter again in Atikokan and northwestern Ontario.

The Chair (Mrs. Julia Munro): Thank you very much for coming to the committee today.

ORGANIZATION OF CANDU INDUSTRIES

The Chair (Mrs. Julia Munro): I'd now like to ask Neil Alexander, the president of Organization of Candu Industries—

Mr. Neil Alexander: Good afternoon. Thank you very much for inviting me to speak to you.

The Chair (Mrs. Julia Munro): Welcome to the committee. As you know, you have 30 minutes in which to make a statement, if you wish, and then questions from the members.

Mr. Neil Alexander: Thank you very much. As was said, my name is Neil Alexander. I'm the president of the Organization of Candu Industries. We are an industry association that represents the manufacturers of goods and the providers of services to the Canadian nuclear industry. OPG is not a member of OCI because it is one of our major customers and is a buyer of our goods and services rather than a provider.

It says here at the top of my notes that I was going to restrict my comments to the nuclear parts of OPG, and that will be the bulk of my presentation, but having heard the discussion about gas, there is an observation that I'd like to make which is very dear to my heart and a major

point that I think people missed. Gas produces heat very effectively in our homes, at efficiencies of around 80%. It's also very effective for cooking. If we burn gas inefficiently to produce electricity as an alternative to our other mechanisms for producing electricity, it will run out sooner. As a result, we will not only see an increase in costs in running our houses and our buildings, but we will have to rip out our gas-fired heating equipment in order to replace it with electric heating equipment because we will have no other alternative. At that time, we will have run out of gas and we will have no mechanism for producing the electricity. It's a very short-term approach to dealing with a problem and, as a father of very young children, it grieves me when I hear people using it as their solution to dealing with our energy issues.

Now, having got my emotions in check, I'll proceed with my presentation.

Nuclear is a very important part of Ontario's energy mix. It accounts for 50%—I think we all know that—of the power we produce here in Ontario. The availability of constant, inexpensive electricity has formed the backbone of the development of the province of Ontario as a manufacturing province. The power produced is relatively emissions-free, allowing us to produce our electricity with relatively little impact on the environment. This investment in our nuclear capability will pay dividends as other regions of the world that are largely now dependent upon coal will struggle to meet modern environmental standards for CO₂ emissions and, more importantly, I think, in the short term, mercury emissions, which are now so great that we can't eat the fish from our seas.

Additionally, nuclear fuel is relatively plentiful, allowing Ontario to have a sustainable future with an uninterrupted electricity supply. This allows us the opportunity to use our grid to take on environmentally popular but often less reliable electricity production technologies such as wind and solar. Without that backbone, we would be unable to do that. Clearly, given the importance to the province of its nuclear fleet, it is important that it is run effectively and safely.

Nuclear power plants are by their very nature designed economically and technically to run at full power. Manoeuvring or load-following with nuclear plants will increase the overall cost of electricity to our consumers by delaying capital repayments. But more worryingly, it will also increase the wear and tear on the plants, something that they were not designed to do, that will further increase our costs and in the longer term will reduce their reliability.

So far we have not heard that OPG has been asked to manoeuvre its plants, but we are aware that this is happening at Bruce Power. We consider manoeuvring of the nuclear fleet largely, we think, in order to massage the economics of more politically popular power generation techniques to be inappropriate.

The supply of nuclear electricity within the province is already competitive, with the performance of OPG's plants being directly compared with the commercially

operated plants of Bruce Power. We believe it remains appropriate for the province to retain control of a significant part of such a strategic long-term power generation capacity. However, we also believe that it has been beneficial to also have a commercial competition that has created clear benchmarks by which we can test OPG's performance.

It is obviously difficult to make direct performance comparisons because the plants involved are of different designs and of different ages, but it appears that OPG has responded well to the commercial challenge.

Performance statistics for Darlington are particularly relevant. The Darlington station produces 17% of Ontario's electricity and is a world-leading performer. In 2008, three Darlington plants took the top three positions in the world on the key performance indicator of capacity factor. The fourth Darlington unit had a planned outage and therefore couldn't compete for that level. One of the Pickering units run by OPG came in fifth in the world, and that is a tremendous achievement for Canadian operators and for the Canadian designers of the Candu plants that regularly come in in first position in capacity factor in the world. Darlington, on top of that, also won the radiation protection award for the year for world-class "as low as reasonably achievable" performance for keeping their safety and the exposure to their workers at an absolute minimum. They also hold a number of awards for environmental protection in the region.

Darlington is such a good neighbour that the people of Clarington fought very hard for the right to build a new plant at the Darlington site, and the region has been very disappointed with the suspension of the decision that has taken place. We compare this situation in Clarington with the position in Oakville, where I live, where the region is fighting very hard not to have gas-fired plants constructed because of the damage that it will cause to the region.

Notwithstanding the tremendous performance in operating the plants, we know OPG has had problems with project-type work in the past. We'd like to draw attention to the fact that it appears that OPG has been learning from those lessons and has been improving its ability to manage such complex tasks. This year, we saw the vacuum building outage taking place at Darlington. The vacuum building outage is a very complex outage that only takes place every 12 years. The project started on April 15 and was completed on May 25, pretty much on schedule. The work involved over 4,000 workers, both OPG staff and local contractors from my member companies. In addition to those 4,000 workers who were working during the project, they acquired 9,500 new pieces of equipment or plant that were installed during the outage. Much of that comes from local companies.

I would like to take that opportunity to expand on that and talk a little about what OPG's nuclear plants do for the local business community. The great benefit in producing nuclear power is that it's mankind that does most of the work; uranium is not a natural fuel and it takes a lot of human intervention in order to create energy.

Gregory Smith, who used to be the VP at Darlington, used to say that the only more labour-intensive way of producing electricity would be to put people on treadmills and make them run to produce the power. It's a good point, because the great benefit of nuclear power is that rather than the work being done remotely and the benefits of the jobs being created remotely, the jobs are actually created in the community that runs the nuclear power plant. That's one of the reasons Clarington was so keen on seeing construction started on the new plants.

That leads, actually, to nuclear power being a \$6.6-billion business in Ontario, creating something more than 30,000 jobs. Many of those are in the engineering, fabrication, SMEs, equipment providers and service providers that make up my membership.

The nuclear industry demands relatively small quantities of high-quality- and very-high-quality-assured components. Price is, of course, always an issue, but quality and reliability are more so, and so work tends to go to companies in which the nuclear operator has confidence. Typically, these companies are nearby, as this allows an understanding to develop between the purchaser and the seller. It also allows relatively inexpensive inspection and auditing to take place during the manufacture. All this means is that OPG does tend to buy locally, and given that Ontario is home to many Candu component manufacturers, it's easy for OPG to satisfy most of its requirements and outages with the existing suppliers.

1410

One concern that we have about the potential to import foreign technology into the mix is that this ability for OPG to buy locally would be reduced, and it would be more dependent upon longer supply chains with companies in which they don't have confidence and don't have a relationship.

The benefit to local industry is much, much greater than the direct sales that the companies produce and the direct work they do. The real benefit lies in the creation of intellectual capabilities in the region and the creation of investments in our factories that allow our companies to compete worldwide.

We have examples of where the nuclear capability has allowed companies to raise the standards in which they supply equipment so that a previous automotive supplier actually started producing automation equipment that was exported to Germany for inclusion in German car factories.

More conventionally, companies like Babcock and Wilcox, because they are in the business of supplying to people like OPG, locally, have the capabilities to produce steam generators for the world steam generator market. Last year, they signed a \$150-million contract to supply steam generators to the Davis-Besse power plant in Ohio, making a huge contribution to the Cambridge region.

Even when Canada is not building Candu plants abroad, the value of our exports as a result of that intellectual capability is still in the order of hundreds of millions of dollars. When we do sell Candu plants abroad, the potential is that it will go up into the billions

of dollars. It is a particularly appropriate time for us to be seeking that leadership position, because there is a renaissance taking place in the world, and our capabilities will be greatly in demand if we can retain our leadership position.

OPG's role in developing the capabilities in Ontario has been absolutely essential throughout the history of our industry. Their historic role in demonstrating and promoting Canadian technology has also been very helpful to our success. Continuation of the role through the demonstration of an advanced Candu reactor would put Canada into the lead in the world renaissance and create a platform for manufacturing jobs here in the province for decades to come.

The major points that we wanted to get across are that we believe that OPG's nuclear stations are making a valuable and sustainable contribution to the health of the Ontario economy. We believe that OPG are managing their plants effectively, as can be seen by the world-leading performance of the Darlington facility. We believe that OPG makes a valuable contribution to the health of Ontario's nuclear industries, and their contribution could be further enhanced by the construction of a Canadian plant at Darlington.

As a result, we don't believe there are any fundamental changes needed to the way OPG operates in its day-to-day management, but we do have a couple of suggestions if you are seeking improvements on day-to-day operations that might make incremental improvements.

We do believe that long-term, strategic plants like nuclear should appropriately be run by provincial government organizations. However, we're concerned that there is too much interference in mid-term decision-making at OPG. That has two consequences: one, it creates problems for them in implementing plans, because there is always uncertainty; but of greater concern, we worry about their morale when their ability to plan is removed and plans are overturned.

We believe that government organizations such as OPG should focus on the strategic needs, and that those aspects that can be managed by commercial companies should be managed by commercial companies. We believe there is still opportunity within OPG to look at parts of their operations that might more appropriately be provided by the private sector.

The procurement processes at OPG are kept confidential. This apparent secrecy can lead to a view that inappropriate actions might be being taken. We would suggest that it may be appropriate to increase the openness of the procurement capacity at OPG. If it doesn't change in any way their actual decisions, it would demonstrate to everyone that they are the correct decisions.

To retain a world leadership position Canada has to harness the full capability of all its organizations. We are concerned that there do appear to be challenges between OPG and AECL, possibly created at their stakeholder levels. This is unhelpful to the performance of Canada,

and, while being careful not to attribute responsibility to any one of the parties, we would respectfully suggest that improving the relationships between the parties would be beneficial to the industry, to Ontario and to the nation as a whole.

I'd like to thank you very much for allowing me to speak to this committee. My members are a very important part of Ontario's industry. We often feel that our voice is ignored in amongst the clamour created by more outspoken and politically active organizations. So we really have appreciated the opportunity to be heard.

Thank you very much.

The Chair (Mrs. Julia Munro): We'll begin our questions with Mr. Tabuns.

Mr. Peter Tabuns: Thanks, Neil, for coming down today. I appreciate your presentation.

As you're aware, the Minister of Energy and Infrastructure earlier this year announced a hold on proceeding with the RFP process for the new build at Darlington. It has been reported in the Star that the bid from Candu, or AECL, was in the range of \$26 billion. Can you confirm the size of the bid?

Mr. Neil Alexander: No. If I had any indication whatsoever as to what any of the parties bid, then I wouldn't be able to come and talk to you anyway. So I can't. But I think in the industry, there's a very clear understanding that the cost of construction of the reactors was not \$26 billion. If that figure came anywhere from the assessments, it is some aggregated figure that includes a number of years of operation, and possibly infrastructure projects that might take place at the same time to support it.

If you follow the Internet, we've actually stimulated interest all around the world as to what that \$26 billion figure might mean, but the only firm statement we can make is the one Infrastructure Ontario made, which is that it has no bearing whatsoever on the actual situation.

Mr. Peter Tabuns: How many new Candu orders have there been in the last decade?

Mr. Neil Alexander: There haven't been many orders of nuclear plants at all around the world over the last 20 years. In fact, Canada has been one of the nations that has been successfully building one plant after another, albeit in small numbers, up until we completed Qinshan about five years ago. As Qinshan was completed, the refurbishment work at Bruce started. So our companies are in a very good state. They are up to modern standards.

If we compare that with what's happening in the United States, they built over 100 plants but they haven't built anything for the last 30 years. So their manufacturers are in a really bad state. They haven't kept their nuclear standards up to mark and will probably struggle to be able to supply.

So if we can retain our leadership position in the world, we have every opportunity to supply not just to our own plants but to the new ones that will be built in the US, where their own manufacturers will struggle.

Mr. Peter Tabuns: Have you had any orders in the last 10 years?

Mr. Neil Alexander: No.

Mr. Peter Tabuns: Thank you. The question of nuclear liability: The Nuclear Liability Act in Canada, as I understand it, and I would be happy to be corrected, limits the liability of nuclear plant operators and owners to, I think, \$75 million for each incident. Does your industry have concern about the lifting of such a limit on liability? I understand, and I asked the Premier and the Minister of Energy about this, that the plants are so safe that contemplating an accident is just a fantasy. So one would think, then, that insurance would be very cheap and that you wouldn't have to have any shielding from liability. Why does your industry want shielding from liability?

Mr. Neil Alexander: Basically, all industries like to understand the potential liabilities that they may take, so they're always looking to seek a cap on the liabilities so that they can be understood and then taken into their assessments of risk when they go into a contract. But the details of the Nuclear Liability Act are not something that we have given our attention to so far this year, as we've been struggling with other issues.

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Mr. Peter Tabuns: Well, my understanding is that in the States the cap on liability is \$13 billion per incident, and that the only credible study that's been done so far was done by the Seaborn commission, estimating a potential risk of \$1 trillion per incident. Does the Organization of Candu Industries have anything to say about those potential liabilities, the scale of them? Do you disagree with those scales?

Mr. Neil Alexander: It depends what accident you can imagine and the very finite and very often small risks that might be involved. Our members believe it does have to be capped. The magnitude of the potential risk is very high and it is the sort of thing that only governments can deal with, so there has to be some kind of cap to make it possible. Where that is is something that is obviously open to discussion.

Mr. Peter Tabuns: But if Candu installations aren't paying the full cost of insuring against that liability, then that, in fact, is a substantial subsidy to your operation, is it not?

Mr. Neil Alexander: You may look at it the other way around and say that they haven't called on any of those insurance policies, so therefore someone's making a lot of money out of it.

The Chair (Mrs. Julia Munro): Thank you. We'll move on. Mr. Moridi?

Mr. Reza Moridi: Thank you, Mr. Alexander, for this great presentation about the Candu organization and nuclear energy in Ontario.

As we all know, our technology, the Candu reactor, is one of the two major technologies around the world, and I think as Ontarians and as Canadians we should be proud that we have this technology developed in Canada. As you rightly mentioned, Candu reactors in Ontario, and also in Canada, are one of the top four or five performers around the world. There are maybe 400 nuclear power

reactors in operation around the world today, and these Canadian reactors have been amongst the four or five top operators and performers in the world, which we should be very proud of as Canadians.

When we talk about performance of reactors—and of course the Candus are among the four or five top performers in the world—is this mainly related to the fact that Candu reactors are fuelled online, that they don't shut down the reactor for refuelling? Is it mainly related to this fact or partly related to this fact, or is there no relationship with the online refuelling of reactors?

Mr. Neil Alexander: Yes, it is partly related to the online refuelling. It means that you can bring the reactors up to power and run them without having to worry about fuel changes, which the pressurized water reactors do have to worry about, but it's not the whole issue. The reliability and the constancy of operation makes a large contribution to the ability to take a Candu up to power and retain it at power for long periods of time.

Mr. Reza Moridi: On the safety issue of Candu reactors and the other types of reactors, maybe you would be kind enough to elaborate on two points. One is, with Candu reactors, there will inherently be no melt-down in Candu technology. That's what I hear people talking about. The second point is on the health and safety of workers. Workers in Candu reactors receive less exposure to radiation than workers in other types of reactors. Could you elaborate on these two points?

Mr. Neil Alexander: I'd like to try and make out that Candu is better in all those categories than other plants, but in fact everybody is operating to international standards, both in terms of radiation exposure and in terms of operational safety. Everybody is competing at the same level, so they're pretty much level-pegging.

Mr. Reza Moridi: The other question I have: Maybe you would be kind enough again to elaborate on the fact that Candu reactors use natural uranium in relation to other reactors, where the fuel goes into another processing cycle which has its own environmental impact. In this case, we don't use enriched uranium; the Candu reactors use natural uranium, so that basically cuts one stage of fuel processing and fuel preparation for the reactor. That might be another advantage for Candu reactors.

Mr. Neil Alexander: Yes, the Candu reactors that we operate here in the province are all run on natural uranium. There was a new fuel design that Bruce was interested in using but has now dropped that would have used slightly enriched uranium, but natural uranium does mean that you don't have to enhance the uranium. Once you have that capability, you then have the capability to use the uranium for other purposes. From a proliferation point of view, the use of natural uranium is very beneficial.

To be absolutely clear, though, the new Candu plant, the Advanced Candu Reactor, would use a slightly enriched fuel, so you would need to buy uranium from outside of Canada to do that.

Mr. Reza Moridi: Is our nuclear industry planning to set up a plant to slightly enrich uranium in Canada, or is it still the plan to purchase it from foreigners?

Mr. Neil Alexander: That situation has been changing. There were licences being applied for to handle slightly enriched uranium, but I don't believe there has been any move towards enriching uranium here in Canada.

Mr. Reza Moridi: Thank you.

The Chair (Mrs. Julia Munro): We'll go to Mr. Yakabuski.

Mr. John Yakabuski: I'm glad you mentioned in your address, Mr. Alexander, the renaissance of nuclear worldwide. There are several plants either in the planning stages or under construction worldwide, and I think people in Ontario need to take note of that because those are the jurisdictions that are going to have power, and those that don't proceed may not.

Anyway, on the nuclear new build, the suspension of the process, and I know because you're not involved directly—I know if it was AECL, they couldn't comment. The government chooses not to comment or just likes to put out the snippets that they want people to hear. Anyway, they've taken a position that the price wasn't right. AECL, Atomic Energy of Canada Ltd., their bid met the requirements in all facets except the price.

What I'd like to know is, where in the Sam Hill, as they say, would the government ever have gotten the price to compare that bid with? My understanding is that a nuclear power plant bid process is a single contract. It's site-specific. It's plan-specific. It's reactor-specific. You can't go on the Internet or go into Walmart and say, "What's the suggested retail price of nuclear power plants this week?" You have to go through the process. Plus, if the proponent wants to place all of the risks on the bidder, then the price is going to be affected by that.

I'm wondering if it's just political, because where would they have ever gotten the idea that they knew what the price was going to be? They're saying the price is too high; what are they basing that on?

Mr. Neil Alexander: Pricing nuclear reactors, as you say, is not like going into the local car showroom and they have a price on the device. It depends very much upon the circumstances; it depends very much upon the contract that you're expected to sign. This is where issues such as risk and financing and a whole bunch of other non-technology-related issues come in.

Our understanding, and I haven't been involved in the process, is that the province was looking for an absolute guarantee on what was offered, and absolute guarantees become very, very expensive because they expose the commercial providers to risks that they have no control over. For example, if you want an absolute guarantee, you're going to have to understand labour costs in the province of Ontario in 2016, which, as a company, you have no control over, but which the province of Ontario does have some control over. Issues like that you go into a discussion about and move the risks around in order to minimize the overall costs. That's typically how people have bought reactors in the past. Typically they will go through a selection process for the technology and then they will go into negotiation with the winner of that

technology selection in order to get the price that works for all of the parties.

We seem to, in Ontario, have gone halfway through that process and said, "Oh, that's where we're going to end." Again, trying to get back from putting blame in any one place, or "responsibility" may be a bit of a better word, our feeling is that this is an issue of such significance that it requires both the provincial government and the federal government to work together to come to the right solution. Our desire is that they should realize the significance to the manufacturers in the province of Ontario and work together to come to the correct resolution. If they continue to bat balls across from two sides of a court, we will not get the result that we want.

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Mr. John Yakabuski: It would seem that the provincial government wants to play a little game of cat and mouse with the feds because the feds, of course, have control there; it's a federal crown corporation, but it's the province that needs the power. Maybe the province wants to buy AECL; I don't know. You never know what could come out of that side of the House at any given time. But they're the ones who will require the power going forward, and to hold up this process—do you not think that the right thing for them to be doing would be to be sitting down, as we've suggested, with the federal government and AECL and hammering out a suitable contract on this procurement, because the longer we delay it, the closer we get to the time where our current fleet of in-service reactors comes time to either refurbish or decommission?

Mr. Neil Alexander: I think it's very key that the parties come together and that some mechanism is found to come together in order to resolve the issue. Clearly, to tell you the province's side, they have to buy a reactor at the right price. They shouldn't be in the business of overpaying for them, but it does seem to me that a sensible way to get to that conclusion is to proactively respond to the other parties—the federal government and AECL—in order to initiate a discussion that comes to a conclusion.

Mr. John Yakabuski: A lot of jobs are at stake here in this province.

Mr. Neil Alexander: I think that's the other issue that perhaps the province is missing, and that is that, likely, in order to make this happen, and it's quite normal in early reactor constructions, there will need to be some investment that the buyer would not typically pick up, but the investment is to benefit the province of Ontario because 90% of the manufacturing is also done here in the province of Ontario. So there shouldn't be an expectation that the nation pick up all of that cost; there should be some expectation that it come from Ontario as well.

The Chair (Mrs. Julia Munro): Thank you very much. We appreciate you being here today.

CANADIAN GAS ASSOCIATION

The Chair (Mrs. Julia Munro): I'd like now to invite Carol Cameron and Edith Chin from the Canadian Gas

Association to come forward. Good afternoon, ladies, and welcome to the committee. As you would know, we have 30 minutes set aside, during which, if you wish to make comments, we'll have questions from the members afterwards. So, for the purposes of Hansard, I'd ask that you introduce yourselves.

Ms. Carol Cameron: Certainly. My name is Carol Cameron, and I work for Union Gas. With me today is Edith Chin, who works for Enbridge Gas Distribution. We are representing the Canadian Gas Association. We have copies of the presentation that we're going to give today that will be handed out to you.

Good afternoon, Chair and committee members. Mr. Cleland was actually supposed to give this presentation today, but unfortunately he's a little under the weather so we will be giving it on his behalf.

Mr. Cleland is the CEO of the Canadian Gas Association, and that is whom we are speaking on behalf of today. The Canadian Gas Association is the voice of Canada's natural gas delivery industry. Members include major utilities, of which Union and Enbridge are both members. It also includes major Canadian gas transmission companies like TransCanada and equipment manufacturers and service providers, and there are over 50 of those that are members of the Canadian Gas Association.

We are here today because natural gas is an important and necessary contributor to OPG fulfilling its mandate. On slide 3, you will see that we have included the OPG mandate. I'm not going to read it to you today but some of the key words to note in there are the words "safe," "clean," "sustainable" and "environmentally responsible." Those are each key components of OPG filling its mandate, and those are each key attributes of natural gas as a supply source.

Some of the natural gas attributes are: It's safe and it's reliable. Natural gas has an excellent history of safety standards in all aspects of this industry, including exploration, production, transportation and delivery. Natural gas is transportable, it's storable and it can be delivered on demand. Natural gas is clean and it's efficient. It's a low-emission energy form that is over 90% efficient in many applications. Natural gas is abundant and affordable. It's a growing domestic resource base—and I'm going to speak about that in a few moments—that meets over 25% of our energy needs. It's also a low-cost energy form that makes a positive contribution.

Natural gas is also versatile and capable. Natural gas is used in a variety of technologies, including transportation, manufacturing and, most specifically to today, power generation. It's available today using existing technology and the comprehensive transportation infrastructure across North America.

Specifically with respect to the natural gas-fired generation assets, we continue to invest in the natural gas-fired power generation in the province of Ontario. It's highly efficient and cost-effective power generation, and it has excellent, enabling infrastructure for the inclusion of more intermittent renewable and alternative energy forms into the power supply mix.

With respect specifically to Ontario Power Generation, the Portlands facility is a joint venture between OPG and TransCanada Pipelines. It's a 550-megawatt facility built here in downtown Toronto. That facility went into service in April 2009, which was two months ahead of its predicted schedule.

Not included on this map but also very important, OPG has the Lennox facility, which is located in eastern Ontario. This is a dual-fuel facility which can burn natural gas and oil and is a peak facility meant to balance out the Ontario energy needs.

On this particular graph, the locations that are in purple are the locations that are currently under construction or yet to be awarded. The locations that are blue are facilities that are currently in service today, and these are each part of the Ontario government's mandate to close the coal-fired generation facilities. So these have all been awarded since 2006.

These new plants are all in strategic locations and close to the power demands. In some cases, natural gas generators can be constructed and in service in as short as 18 months.

There have been significant investments in Ontario to serve natural-gas-fired power generation. For Enbridge, there has been over \$90 million in capital invested in their distribution infrastructure to support natural-gas-fired generation. They invested over \$45 million to develop new natural-gas storage capacity at their Tecumseh facility.

Union Gas has invested over \$450 million in new transmission and storage projects to support the overall natural gas needs, including Ontario Power Generation. We have also invested over \$40-million capital for power generation projects within our franchise area. In aggregate, we have added over 300,000 gigajoules a day of transportation capacity from our market centre at Dawn to here in the Toronto area, and over 750,000 a day in incremental storage to support natural gas generation needs.

Supply has been much talked about here this afternoon, so I want to give you a little information on that. Ontario and North America have an abundant and growing supply of natural gas available for use for both power generation and other natural-gas-based energy services. North America has an estimated reserve of over 100 years of annual production available within our continent. Specifically in Canada, there are enough reserves to support another 60 years of consumption at the projected levels. In 2008, natural gas producers added 27 trillion cubic feet of reserves, the largest annual addition in history.

Where are these new supplies coming from? Traditionally, we have relied on conventional sources of natural gas supply, so the western Canadian sedimentary basin, the Gulf of Mexico and Sable Island have all been the sources of conventional supplies for natural gas.

Where we're getting the biggest growth right now is in the unconventional supplies. Specifically, shale gas is the production that's getting all the attention most recently. It is natural gas found in coal seams and trapped within the

shale rock. The pressure from the rock and the water keep the methane trapped in that formation, and through fracturing those formations, the natural gas is released.

Technological improvements, particularly in the horizontal drilling, have added these resources to the natural gas supply capability. The biggest supply source that's closest to us is called the Marcellus shale. It's located primarily within the state of Pennsylvania. Key Canadian sources of shale supplies include the Horn River and the Montney plays, which are located in eastern BC.

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There are also very plentiful shale supplies in the mid-continent, southern US. Haynesville, Fayetteville and the Barnett are all producing abundant natural gas supplies today, and there is adequate and increasing infrastructure in pipelines to bring all those supplies to Ontario. So because Ontario is well connected to these sources of supply, whether they be from the Gulf of Mexico, from eastern BC, we will receive the benefit of these increasing supplies as well as the existing supplies in the natural gas market.

When we look at the supplies and where they're coming from, we also want to look at demands. I have attached here a slide of where we see Ontario demands for natural gas coming.

The power sector is expected to account for about two thirds of demand growth in the Ontario market. We forecast that by 2015 there will be 60 billion cubic feet a day of annual power generation consumption, which will grow to about 110 billion cubic feet a day by 2030. You will see that this is definitely leading the growth in natural gas demands, where all the other industries—industrial, commercial and residential are staying a little more constant.

This demand growth in natural gas is not limited to Ontario. We would see similar graphs in other areas. New England and most of North America would see a similar demand driver in natural gas in power generation.

We've talked about supplies and we've talked about the demands. The next logical place would be price and what the price is going to do. The price has significantly changed since 2008 and most of that price difference has been driven by supply additions. The addition of incremental shale to our resources has put a significant downward pressure on natural gas prices. The recent declines in oil and the weakening economy have also contributed to that downward pressure. We are currently at a seven-year low for natural gas pricing. It has been one of the most affordable forms of energy over the past 20 years. The natural gas line that you're looking at in that chart is the blue line, and you will see that it's falling below all the other sources of energy supply, including residual, which tends to be its bouncing point.

Natural gas plays an important part in the integrated energy portfolio. One of the best ways to improve the environmental footprint of our energy use is to adopt a more integrated approach that improves efficiency and reduces wasted energy. In an integrated system, natural

gas provides a low-emission backup system for renewable sources like solar and wind.

In addition, natural gas plays a key role in the uses of combined heat and power applications, landfill gas and renewable resources. In each of these, natural gas can play an important role, whether it's helping to transport the biogas through our transmission lines or providing a source of fuel supply for the combined heat and power.

Lastly, there are other technologies that support power generation. The most notable, and the two I will speak about here briefly, will be the natural gas hybrid fuel cells and mainline compressor recovery.

In the applications of natural gas, we try to use energy very efficiently and we do our best to reduce waste energy. So whether it is capturing energy created from the decrease in pressure and applying that to hybrid fuel cells while the gas is transporting through our lines, or capturing the waste heat from the compressor plants that are used to increase the pressure of natural gas, both of these have a way to contribute to the energy industry.

In summary, natural gas for power generation growth is expected to be one of the strongest areas of demand. Natural gas makes a valuable addition to the generation capacities of OPG. Both Portlands and the Lennox facility are strong contributors to OPG.

OPG should continue to expand their gas fleet with confidence. There are abundant gas supply resources available to support the growing use of natural gas in the province and across this continent. Significant supplies in both Canada and the US are all well connected to Ontario and will be available for power generation.

Enbridge and Union have made significant capital expenditures to support natural gas power generation and will continue to support power generation in the future.

Thank you very much for your time. Thank you, Madam Chair.

The Chair (Mrs. Julia Munro): Thank you very much. I believe it's the Liberals starting, the government. Questions?

Mr. Michael A. Brown: Hi. Welcome to Queen's Park.

Ms. Edith Chin: Thank you.

Mr. Michael A. Brown: You've listened to some of the presentations—I've seen you out there listening to the presentations—and we get various pieces of advice, as you may note, about what the exact cost of gas energy is. I think we had one just shortly ago where a number was suggested. What would be your number per kilowatt hour for the production of electricity using natural gas, at present prices?

Ms. Edith Chin: Of course, that depends on the price of gas, and it fluctuates every day. When I was reading the information from the IESO today, I know that almost all the gas-fired generators were running, which means that it must be the lowest-cost generation at 20-some-odd dollars per megawatt hour. That's what I saw today before I came here.

Mr. Michael A. Brown: That's interesting. One of the advantages, of course, of natural gas is that, as you

say, you can sometimes get a plant up and going in as little as 18 months, which in a dynamic economy is an important thing. The other issue around electricity production is the need to get it to where you need the electricity. It seems obvious to me that natural gas can be placed closer to where the energy need is with maybe smaller or fewer transmission lines to do that. Would that be the case?

Ms. Edith Chin: We would think so. The other flexibility is that it also comes in different sizes, so it could be larger or smaller. It could also help in maintaining the grid voltage control. There are a lot of advantages that different forms of natural gas generation can offer. It also comes in a combined cycle or a simple cycle, depending on whether it would act as a peaker or an intermediate load plant. So it's very versatile in nature.

Mr. Reza Moridi: Ms. Cameron, thank you for your presentation. You mentioned the natural gas resources around the world, and Canada, of course, is quite abundant and there is lots of it. I think you give a number of 60 years. I was wondering if this number of 60 years is based on proven resources or on estimated resources that we have.

Ms. Carol Cameron: Both proven and estimated. The current level of—

Mr. Reza Moridi: Are the two the same—proven and estimated?

Ms. Carol Cameron: Not according to the geologists. The proven reserves are believed to be approximately 12 years and that's what that graph illustrates. But the estimated resources or the yet-undiscovered are estimated to take us well beyond 60 years.

Mr. Reza Moridi: So for 60 years we have resources in Canada if we use our gas consumption at the same rate as we have?

Ms. Carol Cameron: Just in Canada alone, but we don't have to rely on just the reserves here in Canada. We can also import from the US and we can also import natural gas supplies from other parts of the world. Canada is very unique in that we can store natural gas here. We have the rare rock formations and geological formations to allow us to store natural gas. That is not true across most of the rest of the world. So we have the capability of importing natural gas through LNG, bringing that from Australia or Russia, and storing that here over the summertime. So it gives us added attraction to attract natural gas through the summer, so that at times when we need more gas supplies we will be able to import them as well.

Mr. Reza Moridi: But it's very expensive to transport natural gas, given its density and—

Ms. Carol Cameron: Natural gas will seek a home that will give it its highest clearing price. We have not imported natural gas this summer based on the low price that we are seeing here today, but we have imported natural gas and certainly we do have enough facilities to allow us to do so.

Mr. Reza Moridi: Thank you.

The Chair (Mrs. Julia Munro): Thank you. Mr. Yakabuski?

Mr. John Yakabuski: Thanks for joining us today. I just want to comment on the price. That's the market price for power; it's not necessarily what the cost of producing power is, which you see on the IESO website. That's the market cost for power. We also have to build in that provincial benefit that we have there, which we're paying. I'm sure that all our nuclear plants are running today, all that are available, and that doesn't mean that it's \$20 a megawatt either to produce it there.

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I have a couple of questions on the supply of gas, because we do see the demand or the amount of gas—the growth in power supply is expected to be much faster than the growth in residential. At one time, the focus of the gas industry seemed to be that we needed to get all of those electric water heaters out of the system and all of the electric appliances and get gas—the most efficient form of energy in a home, which is gas, far more efficient than electricity—into as many applications and uses as possible. That seems to be, maybe, a change in the focus.

But in the gas situation itself, the storage facilities at Dawn—I've gotten different answers on this kind of thing, and maybe you could answer this for me, and I'll believe what you tell me, because you're from the industry. Let's just take, for the sake of argument, that the supply was stopped, blocked or whatever. The storage facilities at Dawn, where, primarily, we get our gas from here: What's the capacity like, the number of days of normal demand? What is the capacity of that storage facility?

Ms. Carol Cameron: It's unlikely, actually, that we would not be able to import any natural gas into Ontario, because we have redundant infrastructure. There are five natural gas pipelines that bring gas supplies to Ontario, whether they come from the Gulf of Mexico or from the Rockies or from western Canada. So the likelihood that we could not receive any natural gas supplies is very remote.

Mr. John Yakabuski: We know it's low, just like that nuclear accident scenario.

Ms. Carol Cameron: I can't imagine a scenario in which that would occur, that we're having no natural gas imports.

Mr. John Yakabuski: Well, let's just say that the terrorists eliminated all five pipelines in a very co-ordinated attack. It's crazy, but what would the storage capabilities—number of days—be for that facility at Dawn?

Ms. Carol Cameron: Union Gas can store 250 billion cubic feet of gas. I believe Enbridge can store about 100 billion cubic feet of gas. Union Gas can transport to Toronto about 6 billion cubic feet a day. That's enough to heat 8,000 homes for a winter. So we transport enough gas to heat all of eastern Canada every day. The storage facility—so 250 billion cubic feet, 6 billion cubic feet of gas a day. Gas supplies are—

Mr. John Yakabuski: Forty days.

Ms. Carol Cameron:—very robust.

Mr. John Yakabuski: Thank you very much. That's a different answer than I received from someone else, which I questioned. They told me there was only eight days of storage there, and I said, "That can't be right." So we're—

Ms. Carol Cameron: Very robust.

Mr. John Yakabuski:—talking about 40 days of supply.

Ms. Carol Cameron: At least.

Mr. John Yakabuski: Now, one thing that we did talk about—and it's got nothing to do with the price of natural gas and it's got nothing to do really with the industry; it's about the people who have built and signed contracts for gas generation. OPG conceded that they have a power purchase agreement with the Ontario government to provide power from those stations at a fixed cost. So when we're providing—even though the market price of electricity is low and the market price of gas is low, which lowered their cost, unless we know the details of those contracts, we could actually be paying a significant premium to those people. I mean, as the people of Ontario, the rate base, we could be paying a significant premium to those generators because of the fact that they have fixed-price contracts with the OPA. Is that not correct?

Ms. Edith Chin: From what we know, and I think that the contracts are public—maybe the details are not, but the template of the contracts are public—they're not fixed-price contracts; they are kind of deemed dispatch contracts. So I don't think—

Mr. John Yakabuski: They are not public. We cannot get access to the contracts.

Ms. Edith Chin: I know that the details are not public, but the template of the contracts are public. How they would be compensated—the methodology—is public, so from at least what we know, it is not a fixed-price contract. But I'm sure that the Ontario Power Authority would be able to give you more details.

Mr. John Yakabuski: They'd be able to give it to us, but they won't. But thank you very much. That's proprietary information. They do not release that information.

Ms. Edith Chin: But the methodology of how they are compensated is public.

Mr. John Yakabuski: And each contract is individual?

Ms. Edith Chin: Yes.

Mr. John Yakabuski: Thank you.

The Chair (Mrs. Julia Munro): Thank you. Mr. Tabuns?

Mr. Peter Tabuns: Carol, Edith, thank you very much for coming today and making the presentation. Looking at the "Ontario Gas Demand" chart, how many megawatts—it's your page 9. That portion of gas consumption for power generation: How many megawatts of generation capacity should that reflect when built out at 2030? If you don't know offhand, if you could agree to

send a note to the committee so that we would know what you're projecting, I would appreciate that.

Ms. Carol Cameron: I would much appreciate that opportunity, actually. I would say that currently there are over 2,000 megawatts of natural gas power generation in Ontario. I am not sure what the projected number is off the top of my head; I was going back into some previous conversations and I can't bring that up, but I will definitely bring that forward to you and to the committee.

Ms. Edith Chin: May I add something?

Mr. Peter Tabuns: Yes.

Ms. Edith Chin: I think it's important to know that the gas consumption is based on the energy generated; kind of megawatt hours.

Mr. Peter Tabuns: Yes, and that's the second question I had for you.

Ms. Edith Chin: Exactly. So you can build a 1,000-megawatt plant, but if you don't run it, it still consumes zero gigajoules. So I think we have to make sure that we know the assumption behind what is the load factor from which they run.

Mr. Peter Tabuns: Right, which was going to be my second question. I thank you for anticipating it. I'd like to know the total projected buildout of megawatt capacity, but also the number of megawatt hours or terawatt hours per year that you expect to generate using that much gas, because my assumption is, you're not talking about large-scale gas consumption for baseload. Is that assumption correct?

Ms. Carol Cameron: That is correct.

Mr. Peter Tabuns: All right. Again looking at these figures, you show a number of different ways of generating electricity using gas. On the record, I'm going to ask—and you may not have the answer offhand—what proportion of the consumption of gas for power generation at 2030 is expected to be conventional monogeneration and what percentage is expected to be cogeneration. When I talk about cogeneration, just to be precise, cogeneration in which the heat production dominates the production priority, so that the electricity is a by-product.

Ms. Carol Cameron: We will certainly appreciate taking that and following up with you at a later date.

Mr. Peter Tabuns: Okay. The second question I had was about the other natural gas power-gen technologies, because clearly you can recover energy from the pipeline, from depressurizing the gas when you take it out. Can you tell us what the potential megawatt capacity is? And if you can't at the moment, if you could commit to telling us later.

Ms. Edith Chin: We'll get back to you. I think it's in the order of a couple of hundred megawatt hours.

Mr. Peter Tabuns: How many?

Ms. Edith Chin: A few hundred megawatt hours.

Mr. Peter Tabuns: Ah, okay.

Ms. Edith Chin: But I think that the best thing—

Mr. Peter Tabuns: Useful, but not really huge.

Ms. Edith Chin: I think that it's best for us to get back to you.

Mr. Peter Tabuns: Okay. Natural gas hybrid fuel cells: My understanding is that the use of fuel cells is still very limited. How much of this is online now, if you can tell me, and where do you see the use of fuel cell technology going in this province in the next 10 to 20 years?

Ms. Edith Chin: Very little is online. I think one of the attractions of the fuel cell is that it can be located in urban areas and areas where environmental concerns are of real concern to people. But in terms of how much can be employed, it depends on a lot of factors.

The Chair (Mrs. Julia Munro): Thank you very much. That completes our time. We appreciate you coming today.

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LAC SEUL FIRST NATION

The Chair (Mrs. Julia Munro): I'd like to ask Chief Clifford Bull from Lac Seul to come forward. Good afternoon and welcome to the committee. As you would know, you have 30 minutes in which to make a presentation. Any time left over, we'll use for questions and comments from the members. So if you're ready, Chief Bull, please go ahead.

Chief Clifford Bull: Meegwetch. First of all, I'd like to acknowledge the Creator for allowing us to be here today. Thank you to the committee and its distinguished members for the opportunity to appear before the committee. As you may be aware, the Lac Seul First Nation was invited to testify before this committee in its review of Ontario Power Generation Inc. Given the recently concluded partnership between the two parties with respect to the Lac Seul generating station, also known as Obishikokaang Waasiganikewigamig, there are four key messages from today's presentation. I have handouts that everybody can follow along, and after I do my presentation I'll answer some of the questions from the committee.

Here goes. Today's presentation will talk about the historic relationship between the Lac Seul First Nation and hydro development, among others. OPG or its predecessor has not been very good. We've had a sad history of hydro development in our watershed. We've been left out of the picture. It's comforting to know that we are being put back in the rightful place, where we should be, as partners in the resource of our community. For a long time, the members themselves paid the burden of the injustice that has been done. I'm very thankful to the governments that things are changing for the positive.

The other thing that we want to talk about—OPG was initially a reluctant partner, and it took a court injunction to force them to come to the table. I'm going to go into negotiations, a little bit about that. They were very long and very difficult, but an agreement was finally reached that sets out a long-term, mutually beneficial relationship for both parties. Lac Seul First Nation is actively pursuing the development of new hydroelectric sites and is very keen to be a leader in this regard, and future partnerships with OPG are quite possible. It is an exciting

time for our First Nation and we look forward to a positive long-term relationship with OPG and its shareholders.

I'm going to talk a little bit about the history. I'm on page 3 now. In 1929, a dam was constructed at Ear Falls, outside of Lac Seul, for the purposes of hydroelectric generation. There were significant impacts on Lac Seul First Nation reserve lands and traditional territory: The water was raised three metres; roughly 11,000 acres of reserve were flooded and permanently lost to the First Nation; 82 homes, the council house and the First Nation school were lost to the flooding; and the flooding caused the settlement of Kejick Bay to become an island, making access difficult. While the communities of Sioux Lookout, Ear Falls, Red Lake and Hudson benefited from the electricity, the First Nation did not get connected to the grid until the mid-1980s, more than 50 years after the dam was constructed.

A little bit about economic opportunity and the settlement agreement itself: More recently, OPG determined that there was a lot of water being wasted going over the existing dam, so the idea was to build a structure adjacent to the existing one to capture the spillage. That was the basis of the expansion. Construction began on the generating station, a new one, and then what happened was we weren't told of this new development and consulted, and so we had to seek a court injunction. At that point, we were able to get all the parties together and begin discussions. Negotiations were initiated to address past impacts from OPG facilities' operations on Lac Seul First Nation territories, river route diversion and other sites downstream. A settlement agreement was reached which provided monetary compensation. Some of the things that were in the settlement agreement—studies were done; a scholarship fund; an apology was forwarded to the First Nation on site in the community; and the opportunity to acquire a 25% equity interest in the new generating facility.

While this potential equity interest was a first for OPG with a First Nation, Manitoba Hydro and private developers have often partnered with First Nations on hydroelectric development projects in other provinces.

The partnership—introduction. Some of the key aspects were established. Terms and funding were established; external legal and financial support; information on the facility. For us, as First Nation members, we did not have any idea of how electricity was produced. We don't have any internal capacity in terms of professionals working with us, so a lot of this information we had to get from external sources and support from consultants and things of that nature.

Lac Seul had meetings in Toronto. We established some principles of the partnership. After many meetings—many, many meetings—in Lac Seul and Toronto and other areas, we were able to negotiate a successful agreement for a good working relationship with all parties.

On page 6 it talks about some of the challenges that we faced, and there are six areas that we sort of spent

time trying to come to an agreement on. Restrictions imposed by the settlement agreement including a limit on the participation level: I wanted to make it a true partnership, where it would be 50-50. To me, that would be a true partnership, but we were limited to 25% and they would not go any further than 25%. So we settled for that. OPG was reluctant to consider a limited partnership structure, a well-understood, commonly used legal structure in the industry. They were in favour of a royalty-type structure.

The other challenge we had was the reluctance of Lac Seul First Nation to be an observer in contract negotiations with the Ontario Power Authority with respect to HESA, even though this was a contract which would ultimately affect Lac Seul First Nation as a partner. The other one was the reluctance of OPG to consider simplifying some of the future legal issues by creating a distinction between the existing Ear Falls generating station, a heritage asset, from the Lac Seul generating station, though they operate as a single station and use the same water.

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The overall complexity of the agreement is somewhat staggering. There are 11 separate agreements and side letters, 12 including HESA, accounting for hundreds of pages. Of course, there were a number of legal issues that arose, though this could be expected in any negotiation of this type.

Finally, because the Lac Seul First Nation-OPG partnership would be the first of its kind with OPG, there were restrictions, given a desire not to set a precedent for other negotiations with First Nations.

While these challenges existed, it should be noted that these were a product of decisions made at the corporate level, perhaps with government direction, not by the negotiating team. The negotiating team, while tough and skilful negotiators, genuinely considered our viewpoints, and our team has developed a good working relationship with them. Despite all the challenges, were able to conclude a series of agreements which we believe will be mutually beneficial to all parties.

If you look on page 8, there's a structural overview of what the partnership looks like and the objectives: to create a long-term co-operative arrangement between OPG and LSFN; maximize revenue and profits; share in the risks and rewards; limit liabilities to the parties as much as possible; and ensure risks are appropriately managed, structured and arranged to facilitate financing.

In terms of the financing, what happened there was that we were able to negotiate with OPG for offers on impacts within the traditional territory, and roughly \$11 million was asked to be considered. We took it to the people and, through consultations, we accepted the \$11 million. But with the \$11 million they withheld \$4 million, and that \$4 million was to be used to buy into the 25% equity share. That's what happened there. So we did receive \$8 million in cash.

The key terms: Lac Seul brings equity to the table; capital reinvestments funded by each partner; OPG is the

operator and maintainer of the facility until the parties agree otherwise; economic returns are shared by partners; and the structure exit mechanisms are all there.

The partnership returns are tied to the HESA with the OPA, and this HESA agreement is in effect for 50 years. The HESA applies to both the Ear Falls and Lac Seul plants. After the HESA partnership, we will share in the new revenue source.

OPG operates and maintains the plant using best practices through a service agreement with the partnership. The partnership oversight committee reviews the results.

A little bit about the future: There are other sites, and if you look on the map, that's the watershed, that's our lake, and we're sort of in the middle of that. The heart of Lac Seul there is where the community is, and to the west is the generating station.

Lac Seul First Nation is keen to leverage the experience it has gained through the OPG negotiations to become a leader in hydroelectric generation project development within its traditional territories. So there are others. Big Falls is mentioned there. We have started negotiations with a number of private developers and started the process of investigating the hydroelectric potential of a number of additional sites.

The other site that we were looking at was Maynard Falls, which is downstream from Lac Seul. Right now, we're in negotiations with some of the chiefs of those four communities that will be impacted downstream, mainly Wabauskang, Grassy Narrows and Wabaseemoong. So there are four. We have come together and we're trying to establish an overlapping traditional territorial protocol agreement with our First Nations so we can, collectively, together approach governments to acquire the site. As recently as last week, I talked in person with Minister Cansfield regarding that Maynard Falls site. It's on a private park, I believe, and she will do everything to help us and move this project forward, trying to establish a consortium, if you will, of First Nations to develop the site. So things are moving positively in that regard.

As an aside: While there have been a number of positive developments to support First Nations' participation in producing green renewable energy, there continue to be a number of challenges in terms of hydroelectric power. Good economic sites are scarce and have been generally secured by private developers. In these situations, First Nations are in the same position as OPG, playing catch-up through negotiations. A number of economic sites are available but are not accessible due to their status as part of a provincial park, and that's what I spoke about earlier. There continues to be the potential for Lac Seul First Nation to be a partner with OPG in future hydro developments; though, as noted, sites are scarce, we have established within the settlement agreement the monies to jointly evaluate the Big Falls site. This was subsequently granted by MNR to a private developer. If you look on page 10, Maynard Falls is shown to the west of Lac Seul, and there are some other potential sites in the MacKenzie Lake area. There are at least three that are being pursued by private developers.

Long-term benefits: Lac Seul First Nation is seeking the ways in which the people can benefit directly from the partnership with OPG and from other similar resource developments. Given our history with hydroelectric developments, our goal is to offset the cost of electricity to the people. High costs of electricity on reserves make hydro billing impossible for some families to keep the lights on. These include social assistance recipients such as a single mother or the elderly, those hit by the economic recession, such as our forestry workers, and those people who want to work but cannot because of our current limited opportunities, something that council is working hard to change. Our youth are being provided with opportunities to enter the workforce in areas such as hydro operations and opportunities including training, education and life skills development.

The process that we undertook with OPG is part of the closure that the people of Lac Seul First Nation have wanted for years. Our bridge construction projects at Whitefish Bay and Kejick Bay are high-profile examples of putting the past behind us: the Whitefish Bay bridge causeway completed in 2008, at a cost of \$2.5 million, funded with the assistance of MNDM heritage fund dollars of \$1 million; then we also have a big project: Kejick Bay causeway bridge just completed this September—the official opening is on September 25—at a cost of \$4.5 million, funded with assistance from the federal government and hopefully with \$1.5 million in provincial funding which we applied for with MNDM.

Lac Seul First Nation aims to continue the path of self-sufficiency through access to the sensible development of the resources in the Lac Seul First Nation territory. Some of the areas include forestry, minerals and all phases of the mining cycle, and, where appropriate, wildlife, including tourism, and water in the form of hydroelectric generation.

In conclusion, while the process was long and not without its challenges, the Lac Seul First Nation is proud to be a partner with OPG with respect to the Lac Seul Generating Station. We are very excited to see this facility in operation and the economic benefits finally beginning to flow to the First Nation. This is the first time in Lac Seul First Nation's history that its relationship with the hydroelectric development has shown real promise. Lac Seul First Nation looks forward to a positive long-term relationship with OPG and its shareholder.

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If you look at the photograph on the bottom, there's a photograph of myself—we bused a bunch of youth up to the hydro opening—Minister Smitherman was there and dignitaries and the federal government. We took some of the elders. The elders are to your left. We had about 20 elders, and about 20 youth showed up.

These youth that you see in the picture represent the future entrepreneurs and the hope of our nation to free us from the bondage of welfare and the sad legacy of the past.

That is my report. Thank you for having me.

The Chair (Mrs. Julia Munro): Thank you very much. We appreciate your coming. We have about three minutes per caucus, so we'll begin with Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much for making the trip and joining us today. Three minutes doesn't give us a whole lot of time, so I don't think I'm going to ask anything too specific. I do congratulate you on being able to work out this agreement with OPG. You've indicated and you've articulated that it was a long process that in fact goes back before either of our times, probably, with respect to your First Nations community. We do congratulate that, and perhaps it will stand as a benchmark to future co-operative agreements between OPG and other arms of the people of the province of Ontario as well as the First Nations. Again, thank you for coming.

I did want to ask one thing, though. The station went into operation this year?

Chief Clifford Bull: Yes.

Mr. John Yakabuski: I don't know if I heard OPG talk about it today. It's operating well and successfully?

Chief Clifford Bull: Yes. We're going through the motions of getting the kinks out. There's an adjustment period. They're going to be putting our first payment in this month. This is for July, I believe. We're expecting some monies to go into our account. So the money is flowing.

Mr. John Yakabuski: Thank you, Chief.

Chief Clifford Bull: Thank, John.

The Chair (Mrs. Julia Munro): Mr. Tabuns.

Mr. Peter Tabuns: Chief Bull, thank you very much for coming here today and making this presentation. You've gone through a long and difficult process. Are there any things that you could recommend to us as legislators that we might do to facilitate the path for others who follow you?

Chief Clifford Bull: I've also brought my assistant. Chris is my lands and resources technician. He's been very instrumental in going through all the hoops we had to jump through. It wasn't entirely myself; I had a good team on my side. I think the main thing is that we have a common interest. Give First Nations people a chance. We want to share the resources and the fruits that this great country, Canada, has to offer. We don't want to be left behind. We want to catch up. We have a rich country and we should all benefit.

Mr. Peter Tabuns: Okay. Thank you.

Chief Clifford Bull: Chris, did you want to add something else?

Mr. Chris Angecone: The only thing that I would add—

The Chair (Mrs. Julia Munro): Sorry to interrupt, but could you come forward and sit there and then you'll be in Hansard. We don't want to miss this opportunity. Thank you. First of all, could you give your name?

Mr. Chris Angecone: Okay. My name is Christopher Angecone. I'm a member of the Lac Seul First Nation, one of the 2,000 band members who were born off-reserve in the post-flooding days. I was born in

Sault Ste. Marie and spent the first 18 years of my life there. Now, for the past four years, I've been working for the First Nation in a variety of capacities.

I was one of the main negotiating team members representing our First Nation. It was an interesting experience. We anticipated it would probably be six months, eight months, to conclude these negotiations. As it turned out, it was just over two years.

The largest hurdle that we faced was from the First Nations people themselves, in that we were bound to a 25% equity share; as Clifford had mentioned, we were hoping for 50%. For a great many months, we danced around the issue of ways that we could increase that participation level so that it would be fair and equal.

If I could make one piece of advice for the legislation, open it up to 50% or more for the First Nations, especially when it comes to the legacy assets such as Ear Falls. Our partnership is only for the Lac Seul Generating Station, Obishikokaang Waasiganikewigamig. It has nothing to do with the Ear Falls Generating Station. The Ear Falls Generating Station is a significant concern to all of the band members, and yet we have no recourse or tie to gaining any kind of benefit to the impacts that we've suffered over the years because of it.

Other than that, possibly itemizing funding through aboriginal affairs or some other government agency to permit equal playing fields. One of the slides mentions that we have very little in terms of in-house capacity—in-house lawyers, in-house engineers. Any First Nations person with that kind of skill set quite normally finds themselves in major centres and not able to contribute to the First Nations, so we had to hire out at significant expense. Any kind of assistance with respect to that would smooth the process for all other First Nations that are going to be following us.

Mr. Peter Tabuns: Thank you. That's useful.

The Chair (Mrs. Julia Munro): Mr. Brown?

Mr. Michael A. Brown: Good to see you. This is a remarkable achievement for a First Nation. It seems to me that, as you point out, the negotiations with a huge enterprise like the crown corporation Ontario Power Generation, given their resources and your resources, are decidedly unbalanced. To come to an amicable and profitable conclusion for both sides is a major achievement, so I want to congratulate you on that.

I have just some small questions of fact. What size is the generating station? How many megawatts capacity?

Mr. Chris Angeconeb: It depends on how much water is flowing.

Mr. Michael A. Brown: At capacity?

Mr. Chris Angeconeb: At capacity, I believe it was 18.

Mr. John Yakabuski: In the book it's 12 megawatts.

Mr. Michael A. Brown: Oh, is it?

Mr. Chris Angeconeb: At the negotiating table, we never really broke it down into that; we broke it down into responsibilities, so that was more of an engineering question. That also is dealt specifically through the terms of the partnership agreement that are contained and relate

to the HESA. It's an additional, I think, 30% over what was there.

Mr. Michael A. Brown: Would the community members be customers of Hydro One? Who supplies the electricity to your people?

Mr. Chris Angeconeb: Hydro One.

Mr. Michael A. Brown: Hydro One is the distributor?

Mr. Chris Angeconeb: Yes.

Mr. Michael A. Brown: One of the things you're looking at is being able to subsidize or at least help folks on First Nations or businesses on First Nations to deal with the cost of electricity?

Chief Clifford Bull: Yes, very much so. One of the criticisms and concerns I get is, "We own this company here. How come we're still paying these exorbitant prices for hydro? Shouldn't you give us a break?" So we're looking at ingenious ways of maybe subsidizing especially the welfare people and people who are not working.

Mr. Chris Angeconeb: One of our main concerns that we have to internally reach a solution for is, we don't want to create another system of welfare that we've been surviving in for 100 years now. What we would like to be able to do is come up with, like Clifford said, an ingenious mechanism by which we can reduce the rates that are being charged to the people, but we don't want to be giving them another handout, especially one that, depending on the internal healthiness of the people, they might misuse or misspend.

So if we're creating a subsidy, then we'd like—I fear to call it a subsidy. But we would like it to be some kind of mechanism that can meaningfully direct the funds that we're drawing in from this partnership to help offset some of the costs of living on the reserve without creating a situation where—our First Nation is the same as just about every other in Ontario and Canada. There's substance abuse, there's violence, there's lateral violence—all the intergenerational effects of the residential schooling and the Indian Act itself. We don't want to reinforce those by whatever methods that we're coming up with to help the people.

The Chair (Mrs. Julia Munro): Thank you very much for coming, and we particularly appreciate your comments. Obviously, you've opened a new chapter for us. Thank you very much.

Chief Clifford Bull: I just have a request: a little news. I mentioned our bridge. We're having a big grand opening on September 25, so if anybody's in that area, by all means; we're going to have a minister, our MPP and Hydro officials there at the grand opening of the bridge. It brings partial closure to ourselves as First Nations people and it's a good news story.

Meegwetch for having us. Thank you.

The Chair (Mrs. Julia Munro): Thank you very much.

I would just like to ask members to stay for a couple of minutes, just to provide research with some themes and ideas. Otherwise, we are adjourned until tomorrow morning at 9 a.m.

The committee continued in closed session at 1530.

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Agency review:

Royal Ontario Museum

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Examen des organismes
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Musée royal de l'Ontario

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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Thursday 10 September 2009

Jeudi 10 septembre 2009

The committee met at 0930 in room 151 after a closed session.

AGENCY REVIEW
ROYAL ONTARIO MUSEUM

The Chair (Mrs. Julia Munro): Good morning and welcome to the standing committee. I'd invite you to take a seat here and make yourselves ready. We certainly appreciate you taking the time to be able to join us here this morning as we look at the Royal Ontario Museum. For the purposes of Hansard, I'd ask that you introduce yourselves, and when you are ready you may begin.

Mr. Salvatore Badali: Very good. Top of the morning to us all, and thank you for inviting us. I'll introduce us now if that's okay. So good morning, everybody, and nice to be here on this great day. No windows, so you can't see outside, because it's nice out.

On behalf of our ROM boards, staff and volunteers, I'm delighted to be present at this committee hearing this morning to report on the activities and prospects of the Royal Ontario Museum. My name is Sal Badali. I chair the board of trustees there. With me this morning from the ROM's management team are William Thorsell, our director and CEO; on my right Dr. Mark Engstrom, our deputy director of collections and research; behind me, Glenn Dobbin, deputy director, operations; Bill Graesser, our chief financial officer; Chris Koester, our vice president, human resources and organizational development; Ania Kordiuk, our vice president, visitor relations and commercial services; and Tracy Ruddell, head of marketing.

I have a number of remarks, divided into five topic areas, that I'd like to share with you this morning. Let me start by first talking about the nature of the Royal Ontario Museum.

Nearly a century in age now, the ROM is Canada's largest museum and probably the best-known of Canada's museums internationally. The ROM is unusual in several respects. First, the museum is a universal museum of cultures. Its mandate is literally carved in stone on the Queen's Park façade of the building as, "the arts of man through all the years." There are few universal museums of culture left in the world today. Most museums specialize in a few cultures, in particular places and times. The British Museum, the Victoria and Albert, the Metropolitan Museum of Art in New York and the

ROM retain their universal character, a reflection of 19th-century ideals that saw museums as encyclopaedias intended to expose local populations to the entire world.

Second, the ROM is a significant museum of natural history. Again, in words written in stone at the Queen's Park façade, "the record of nature through countless ages."

I'm sorry; I forgot to say to you that the nature of our universal culture is very important here because Canada's population reflects so many different cultures and places. The ROM's collections can speak to everyone, offering common ground consistent with the diversity we see in Ontario and Canada.

Our collections in natural history rank among the finest in the world, from minerals to the fossil record of early life to dinosaurs, early mammals and the world of biodiversity and life at risk. In most places, museums of culture and nature separated into distinct institutions many years ago. By chance of history, these mandates remain intact under one roof at the Royal Ontario Museum. We're much more aware these days that culture and nature are intimately related rather than separate realms. The ROM is perfectly suited to draw links between humanity and nature in this age of environmental stress and biodiversity. A globally respected, universal museum of cultures married to a major museum of natural history creates a rare institution of enormous breadth and authority in the world. That is the Royal Ontario Museum.

The ROM became an independent agency of the government of Ontario under its own board of trustees through the Royal Ontario Museum Act of 1968. Trustees are now joined in shaping the museum by the ROM board of governors, who provide robust philanthropic and sponsorship support, and by the board of the Institute of Contemporary Culture at the ROM, which focuses on issues of social and cultural change in the modern world.

I've spoken to you of the ROM's collections, but museums are also significant engines of research, education and conservation. The ROM grew out of the University of Toronto in 1912 and retains close links with it. Many of our curators are cross-appointed at the university and teach students attending there, especially given that the ROM maintains well-known programs of research in archaeology, art and natural history around the world. In addition, significant numbers of graduate

students carry out research and engage in study programs in our collection areas. Further in terms of education, you may be interested to know that the ROM serves as one of the largest non-school educational institutions in Canada, with more than 150,000 students a year attending its organized programs in culture and nature. We have a suite of classrooms and a number of teachers.

We first opened our doors in October 1914 on Bloor Street, and expanded in 1931 and 1982 to accommodate growth. We're here today after another decade of significant capital expansion—the largest museum capital project in Canada, and likely one of the largest in the world. Renaissance ROM, as we called it, had a number of goals, all intended to serve the public purpose.

First, as one of the world's great museums, the ROM is defined by its collections and research. Many of these collections became stranded in our vaults over time and were inaccessible to the public. Many of these collections lacked curators and technical staff to care for them. Thus, accessibility to our collections was a driving force behind Renaissance ROM.

Through RenROM, we aimed to display all the ROM's major collections in permanent galleries. We're now nearing completion of 27 new galleries, some of them rehousing famous collections such as dinosaurs and Chinese art, but others bringing stranded collections to public view for the first time in many decades. Further, and very importantly, we're now hiring new curators and technicians to care for and expand our knowledge of them. These formerly inaccessible collections include Canada's First Peoples, Canadian historical art, Japan, Africa, Oceania, the Americas, Cyprus and Bronze Age Greece, textiles and costume, South Asian civilizations, the early fossil record of life on earth, and much of our collections in mineralogy and biodiversity. In bringing all this forward to the public again, we are honouring the legacy of those who built these priceless collections over the last century as a public trust.

Second, we're housing most of these new galleries in the wonderful halls and wings of the original heritage buildings, which had suffered under various renovations over the years. RenROM has been the largest heritage restoration project in Canada over the past decade, restoring the values and dignity of these important historic buildings on Queen's Park and Philosopher's Walk. Nothing was destroyed and much was recovered of these buildings, which speak so eloquently to the vision of our forebears.

Third, we held a public, international search for an architect to create new galleries and public amenities on Bloor Street. This led to the appointment in 2002 of Daniel Libeskind, who proposed the crystal as the ROM's new entrance lobby, with seven new exhibition spaces and public amenities. This dramatic, not to say radical, structure fired the imagination of Toronto and beyond, and emerged as one of the icons of Ontario in the 21st century, described by Condé Nast magazine in 2008 as one of the seven architectural wonders of the modern world. I also recall that Time magazine did a

two-page colour article on us in their international exhibition and called us a gem.

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The rebuilding and new building of the ROM on Queen's Park and Bloor Street has sparked new life in that area of the city and the city as a whole, and created many jobs through construction, design and tourism. Last year the ROM attracted more than one million visitors, a record attendance, up 40% from its pre-project averages. We also posted record revenues earned from our own activities. I might just digress for a moment from my text and say that prior to our project, self-generated revenues were in the neighbourhood of \$11 million a year; they are now \$26 million to \$27 million a year.

In the service of programming and education, RenROM has added substantial capability to our new learning centre and public spaces. The museum has created a new department of programming and education to produce a vibrant and diverse menu of lectures, debates, symposia and unique learning experiences, such as ROM sleepovers for younger children and their parents.

Beyond the physical dimensions of our collections and buildings, the ROM will now play a much more conspicuous role in the intellectual life of Ontario on matters of environmental and social change. The government of Ontario provided the essential spark to set all this change in motion. Ontario committed \$30 million of capital funds in 2002 and a further \$12 million in 2005. This combined capital contribution of \$42 million assisted the ROM in raising an additional \$30 million from the federal government and \$213 million from the private sector as of June of last year. The ROM governors are committed to raising a final \$16 million in support of Renaissance ROM.

Among the ROM's 12 major individual donors in the RenROM capital campaign, half are first-generation immigrants to Canada, including Michael Lee-Chin, for whom the crystal is named. Moreover, more than \$14 million of the private sector funds were raised from sources beyond Ontario's borders.

The return on Ontario's capital investment in Renaissance ROM is in the order of five times the original sum, surely one of the highest returns for public infrastructure spending on record. In fact, the ROM's capital campaign has turned out to be one of the most successful in the history of Canadian cultural institutions, with contributions from many communities, individuals and sectors of society. Seventy-five per cent of the funds to rebuild the ROM have come from private individuals or corporations in Canada, powerful evidence, we believe, of the regard in which museums are held in this province.

Lastly on this topic, you may be interested to know that a total of almost 6,000 individual donations were made to the capital campaign, ranging from all of Canada's major banks and financial institutions to specific cultural communities—South Asia, for example, Japan, China—individual Ontarians and the ROM's own department of museum volunteers, whose members

personally donated a total of \$1.7 million, 70% higher than the original target.

While the ROM's capital campaign reached new heights, the government of Ontario has provided critical additional operating support to the museum in the past several years. Indeed, out of this year's provincial budget, the Ontario government increased the ROM's operating base for the first time in 15 years; the real value of the provincial operating grant had fallen by 50% over that period, and indeed, during that period, we suffered some cuts. This has put the museum on a more sustainable financial footing and allowed the ROM to offer Ontarians and tourists alike a powerful program of special exhibitions, lectures, debates and other events in its spectacular new facilities on Bloor Street.

Looking ahead, we're committed to vigorous annual programming across our mandates of culture and nature. This includes contemporary subjects through the ROM's Institute for Contemporary Culture, which recently hosted an exhibition on street art and homelessness in Toronto and which will host an exhibition on Vanity Fair portraits as well as Canadian celebrities, beginning September 23.

The ROM's education programs will expand beyond Toronto via the Internet, with added in-house family programming during weekends. And the ROM is now working more closely with the Ontario Ministry of Education and local authorities to create curriculum content related to special exhibitions such as the Dead Sea scrolls.

Our outreach programs across Ontario will grow beyond the 490,000 people who saw ROM travelling exhibits last year. Our innovative program of community exhibitions from local sources will continue, and we will expand our program partnerships, such as those with Earth Rangers, Caribana and the Blyth Academy, to better serve the public.

We will also build on our global contacts to develop more original international exhibitions such as this year's Dead Sea scrolls exhibition from Israel and last fall's Trypillia exhibition from Ukraine. As well, we have created special working partnerships with museums in Jordan, Beijing and Nanjing to share expertise and develop new public programs. Currently, we are working with museums in Montreal, Calgary and Victoria to bring major exhibitions from abroad to Toronto and then to the rest of Canada.

With capital fundraising almost complete and support from additional provincial operating funds, we are changing our focus from facilities to people. We are vigorously expanding our access programs for disabled Ontarians, students and families of limited means. We were honoured to receive the city of Toronto's Access Award last year for our accessibility initiatives for the disabled and this year the government of Ontario designated the ROM as an example of leadership in implementation of the Ontarians with Disabilities Act.

The ROM's admission prices are within the norm of similar attractions in Ontario. Nevertheless, to address

economic barriers that we know exist we created the ROM CAN program of targeted assistance to citizens with limited means, announced last year by our Premier. The ROM provided 50,000 free admissions, worth \$1 million, in the past year under this program. Under ROM CAN, the museum offers free access to all Ontario post-secondary students one day a week and free family passes to new Canadian citizens and users of various United Way agencies.

The ROM is also open for free admission to everyone in the last hour of each Wednesday and for half price on Thursday evenings. New school bursary programs, amounting to more than \$120,000 last year, are bringing 12,000 students from the GTA and beyond to the ROM; classrooms who would otherwise be unable to afford it. It's our dream that every Ontario school child should experience the ROM in some way each year, on-site or at distance, in a meaningful way. Indeed, having raised most of the capital required for RenROM, the ROM governors are now launching a bold new fundraising initiative called ROM access, which will extend the museum's reach into many more schools and communities that cannot otherwise afford to attend the museum.

To finance the museum of first international rank of arts and science in Ontario, the ROM must rely on a triad of public operating support, earned revenues and philanthropy, and to meet its social obligation to reach the various communities across Ontario, we're developing the most aggressive philanthropic and sponsorship programs in the country. As you may know, major museums in several countries, including the United States and Great Britain, are open at no charge to visitors as a matter of public policy. The rationales for this are public education, social integration and the promotion of tourism. We believe this option to be worthy of consideration in Canada as well, given similar goals here and the recent investment in museums as public assets.

The ROM belongs to everyone, and as our CEO says, is the new agora or meeting place in Toronto and beyond. More than a traditional museum, we provide common ground across cultures and interests and offer a forum to explore and debate cultural and environmental issues of our time.

On behalf of my board colleagues, management and staff, I thank the people of Ontario for their support of the ROM through the government of Ontario and through their patronage of the museum. We thank our donors and volunteers for their remarkable support over the past decade in re-creating the museum, and we express pride in the ROM staff who have so effectively enhanced this legacy for future generations. We're particularly grateful today to you for having asked us to come and talk to you. We're very proud of what we've accomplished, and the floor is now yours.

Ms. Lisa MacLeod: Most people don't say that when they come to this committee.

Mr. Salvatore Badali: Well, ask on the way out.

The Chair (Mrs. Julia Munro): Thank you very much. This morning we'll begin with questions. Ms. Albanese.

Mrs. Laura Albanese: Thank you for your presentation. I wanted to begin by asking you how you're planning to reach more people. You've mentioned how you're planning to reach more people in Ontario; you mentioned the outreach program and the Internet. However, there has been a decline in tourism, especially from the United States. How are you responding to that?

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Mr. Salvatore Badali: Great question, thank you. Chairs should watch themselves. I'm a governor. Good governance means management manages. I try to remember that, and my board tries to remember that too. So with many of the questions today, if they deal with operating matters I'll invite my colleagues to respond. William, why don't you take that one?

Mr. William Thorsell: It's true that the decline in American tourism, which has fallen about 50% since the beginning of this decade, visiting Ontario, has affected our business plan and the way we strategize and the way that we operate the museum.

Fortunately for us, we live in a province where about six million people are contiguous to the museum—they don't need a passport to come downtown or to go home. Ontario and Montreal are out there as well. We have a large domestic population where historically we rather took them for granted, I think, and we relied on the bump of tourism in the summer to carry us along.

We had a relatively low penetration of tourists who visited Toronto at the ROM before Renaissance ROM, so when we looked at the data when I first went there nine years ago, of the tourists who came to Toronto, quite a small portion went to the ROM. Larger portions went to other attractions. One of our goals was just to raise our proportion of the numbers coming here to come to the ROM.

Now, of course, half of them are missing. That's millions of people who are not here in the summers when we relied on them. So we've turned our attention as other institutions have—theatres—to Ontario itself and to Canada first of all, to say we need to address ourselves emphatically more convincingly to the people of our own province first. Therefore, we've reoriented our programming, our marketing, our group sales operations to southern Ontario first of all and then beyond into Ottawa and Montreal because this is a large and relatively unplumbed marketplace for us. There's an emphasis here on the family tourism market.

Fortunately for the ROM, our mandates are so broad that we can generate matters of interest for a wide diversity of people. We've done a lot of research into why people stay away from museums or go to them and what makes them happy when they're there. We do a lot of exit surveys to find out how the experiences have been.

We realize that we have a very strong traditional visitorship from Toronto itself who are interested in art and archaeology and science. But there's a large group of people with families and new immigrants with families who have never been to the ROM. So part of the whole

Renaissance ROM program was to generate, as I call it, a landscape of desire and motivation to go to that museum. That meant bringing out all of these collections, but it also meant, in the absence of these tourists, reaching much more aggressively beyond even 905 into 519 and 613 and so forth and realizing that we have the great good fortune of millions of people who should be going to museums like ours, who in the past we've kind of taken for granted because we had the tourism.

The second response to the tourism is that we have developed partnerships with Ontario Tourism Marketing, Tourism Toronto and OCAF to project the really high value of things that we're doing, to American cities where there is still a propensity and capacity to travel. These are called, in the tourism trade, travellers rather than tourists. These people tend to be cultural tourists. For example, we had a special OTMP grant this spring to advertise the Dead Sea scrolls in a major way through the New York Times and New York, Boston and Chicago because there are constituencies there that are more or less likely to travel, pick up and come to Toronto for something like that.

It's a combination and response of turning to our own backyard and doing much more aggressive work through media, marketing and group sales and partnerships here and then a more targeted attack on the American tourism market for a particular audience.

Mrs. Laura Albanese: Do you have a specific strategy to attract Ontario's diverse communities or young people, for example?

Mr. William Thorsell: Yes, and there we have numbers of programming and friends groups that we rely upon.

First of all, we'll do Muslim Heritage Weekend; we'll do Chinese New Year weekend; we're going to do Iranian New Year this year in March. We produce cultural weekends, often with the assistance of the community leadership in those communities. So for the Muslim weekend last spring, we worked with the Muslim communities, and through them, we were able to reach many more people. We do a special rate for them, we do a special programming that they often provide for us—music, dance—we bring out special artifacts, displays and films, and not only does that attract a large portion of that community, but other people who are interested in the Muslim world come at the same time. So we find that that's very important to us.

One of our pieces of research last year was to go into several communities and find out from those communities—South Asian and Chinese communities were the two we looked at—to see if there are certain things that we should be doing to reach them with our programming and what we're doing. Yes, they like their cultural weekends and so forth, but one very clear message came back to us: Those families who are living up in Markham or Brampton or out in Oakville or wherever they are, are coming to the ROM with their children for essentially the same reasons as everybody else. They want to see the dinosaurs, they want to see Egypt, they want to see

minerals. The South Asians want to see Canada's first peoples just like everyone else. And we found out, and I think this was a very happy discovery, that despite all the variation of these communities, the primary structure of what they want to do with their children and everything is the same. So, yes, we have to be on their turf to reach them, we have to communicate to them that we're here and all the values, but the Chinese community doesn't come to the ROM for the Chinese gallery and the South Asian community does not come for the South Asian gallery. They're proud of those galleries, but they come for the whole museum.

Largely what we do with our programming to communities is that we have some groups, like the Friends of South Asia group. There are 600 people in that group at the ROM that do several weekends of programming throughout the year and bring their communities in, and we do that with the Chinese community and others. For Caribana, every year we do the art exhibition in the summer. But I think it's more the communication about the whole museum finding them rather than isolating them through channels. To us, that really works.

Mrs. Laura Albanese: I also had a particular interest in the affordability aspect that you mentioned in your presentation. I represent an area where affordability is an issue, and I wanted to know more about that. I know that you offer one evening free a week. Is there any way that that could be expanded? Are you looking at any other strategy in that regard?

Mr. William Thorsell: We've done a lot of studying. We started off with a study: Can we make the ROM free completely? And we did a survey of museums all over the world, a very thorough survey, of all the ways that museums become free or are free or were free, and we looked at all the economics of doing that at the ROM. We consulted with some people in the business community and others on our boards to say, "How can we do this? How can we move in that direction?" And the answers came back that, of course, the cost of making the ROM free completely is something that we can't bear, and we don't believe that governments are in a position to bear.

So the idea came back to focus our "free" by groups, and expand each group as we move along. We do that in a number of ways, as Sal indicated. We're free to all post-secondary students in Ontario any Tuesday of the year. So all the colleges and university kids can come into the museum at any time on a Tuesday. We're free to everybody on Wednesday afternoons for the last hour and a half or so of the day, and, I must say, this summer, it was amazing to see how people plan their week for that opportunity. There would be a lineup going outside the front of the ROM and around the corner down to Queen's Park a half an hour before we're opening for free, filled largely with families and students—young people. So we started extended that time because it took us a half an hour to get the line into the building, so we had to open up even earlier so that people would actually have their time in there. You can see there's this large demand and interest in going to the museum.

Our access programs: We provide passes through the United Way and rely on them to distribute all those passes every month to various other agencies. We're part of the Canadian citizenship program, where we give family passes for a year to new Canadians in citizenship court; we go and actually hand them out to new Canadians. And our bursary programs for schools are really going to bloom. Just in the last year or so, we've had a couple of major donations, in the hundreds of thousands of dollars, from individuals and corporations to say, "How can we get those inner suburban school kids into the ROM for the organized school visit?" It costs money to come to the ROM, there's a bus often involved, and we charge for the students to come and we have classrooms and labs. So we have bursary programs, some of them based in Guelph, for example—there's one for Guelph school children—and now the governors of the ROM have identified this as a major goal. We're finding a lot of resonance for this when we go and visit corporations and individuals, who are saying, "I don't want bricks and mortar anymore; I want people in that place." So this is a very promising vein for us as we go forward.

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Mr. Salvatore Badali: I might add, we at the board level take access very seriously, and that's why my talk invited us as a society—not just here in Ontario but in Canada—to reflect on whether we should move in the direction of the Smithsonian Institution, the British Museum. President Sarkozy in France talked about doing the same thing there. There's a good public policy issue here—we've done the studies—because we know that when institutions go from charging to open access, the number of visitors increases dramatically. It's good for tourism, it's good for social integration, and it's good for everything.

I remember comments from Robert Bateman, for example. He came to the museum as a young child and we all know his paintings. He said, "I am what I am today because of my time at the ROM. I saw those animals and it inspired me." Margaret Atwood has said similar things, so access is very important to us.

Mrs. Laura Albanese: Madam Chair, I don't know if my time is up or—

The Chair (Mrs. Julia Munro): No, you have a couple of minutes, if you wish to continue.

Mrs. Laura Albanese: At this point, I would ask my colleagues if anyone has any questions.

The Chair (Mrs. Julia Munro): Yes, Ms. Pendergast.

Ms. Leeanna Pendergast: Good morning, and thank you for your time this morning. I just wanted to jump in on a segue to the youth reference and follow up. This is quite an opportunity for me this morning and I thank you for being here.

As an educator for over 21 years and a mom of three boys, I spent a lot of time in the classrooms at the ROM looking at the artifacts and understanding that all children learn differently—and the concrete materials, the way the ROM makes it real for students; it takes it out of the

textbook. I couldn't help but wonder every time I sat in those classrooms with those teachers, is the ROM thinking or looking ahead—which I know you are; you mentioned it in your speech—to build this relationship? It's such an important relationship to education, to look at how you can, in the future, build that so important relationship between the classroom and what the teachers are doing there and the real world that the ROM brings and the antiquity and the future and everything that you have to offer. If you could just speak briefly to that plan of moving forward, that would make me happy as a mom and as a teacher.

Mr. William Thorsell: Thank you. Right now, we have about 150,000 students who come in the organized programs. There aren't the ones that come with their parents, they come on their own with the school groups. This year, for the first time, with the Dead Sea scrolls exhibition coming up, we decided to start a year early and we involved the Ontario Ministry of Education and the Toronto school board to say, "Here's what's coming up at the ROM: the Dead Sea scrolls. It's a very interesting topic." So we worked with them and they developed curriculum in time for this fall for their students to come and exploit that exhibition as part of their curriculum. So instead of us trying to fit the curriculum, as we usually do, we worked with them to have the curriculum fit the exhibition, a special opportunity, in this case.

The second thing, of course, is access and getting more of these bursary programs in. We had a member of our board who had adopted a school up in Jane and Finch as sort of a philanthropic thing, and he said to us, "Can we get that school down for a visit?" We said sure, and he paid for that whole visit. So I went out and met the bus on the street as it arrived, and all of these kids and the teachers poured out of the bus, all excited. I was chatting with the teacher, saying "This is wonderful. These kids have never been down to the ROM." She turned to me and said, "Mr. Thorsell, many of these kids have never been downtown." They were standing at Bloor and Avenue Road, looking around at a city that they didn't know, which came as a tremendous surprise to me. So the bursary programs are absolutely critical and, as I say, we're very optimistic about them because everybody that we go to for sponsorship on these responds really quickly to that one. They want to help us with that.

Third, there's a cheaper way to reach students: through virtual classroom. We're part of what's called the ORION. It's a broadband network that links all the educational institutions in Ontario and beyond, where you've got a two-way classroom onscreen. We've examined one of these examples in Alberta. I'm just back from there. We have tested it out in our own building, and we are now looking at establishing a virtual classroom capacity at the ROM so that we could teach a live two-way to five schools at a time without them having to get on the bus and come from Sudbury or Sault Ste. Marie or somewhere, and we could charge them very little to do that, just to cover those costs. We're not in there to make

money on this. So the virtual classroom project, as we call this—we've got the hardware, we've got the broadband, we've done some testing. We're looking at what other people have done, and we are making some proposals now to potential donors for a permanent, long-term commitment to virtual classrooms, as well as bringing the students in that way.

Mr. Salvatore Badali: Most of us have been to the museum, but the classrooms, if you ever wanted to go, are very fascinating. I remember visiting one time. There was a class in there. They sit at tables of four, and we put real historical objects on those tables. Take medieval Europe: There's an object there. It might be an axe head and it might not be so valuable etc., but you can touch it. The ROM teacher will say, "What do you think that was used for?" Roscoe will say, "Chopping somebody's head off." Susie will say, "No, it was for chopping trees down because they needed to make their own furniture." Then they get a lesson—they're both right—talk about the society. Then they go into the galleries and move from table to table and see what we've got on medieval Europe. And they never forget it. I certainly didn't.

Mr. William Thorsell: In fact, we don't call them "classrooms," because they don't come on a bus to come to the ROM to go into a classroom with a board. We don't use blackboards. We call them "labs." They don't go into a classroom. They go into a lab, and they get to touch things.

The Chair (Mrs. Julia Munro): Thank you. We'll move on. Ms. MacLeod.

Ms. Lisa MacLeod: Mr. Badali, it's a real pleasure to have you here today and for me to be able to say thanks, because, like Ms. Pendergast, as a mom I've taken my little girl to the ROM every year, and it's a real pleasure to take her there. It's a real source of pride for me, as an MPP, to know that we have an institution in this province dedicated to higher learning but also to protect and create awareness of our natural history. So I want to thank you.

You've done a great job this morning communicating to our committee what your future plans are and what you've done in the past. I know that my colleague from Wellington-Halton Hills, who's also our culture critic, will have more to add.

I will ask some operational questions, if we could start with that right now. I'm just wondering if it's possible for you, as chair, to table with this committee in the next week the expenses of your board of trustees—the 18 trustees: the 15 who are appointed by the Lieutenant Governor in Council, as well as the three trustees.

Mr. Salvatore Badali: We can certainly do that. I hope you won't be shocked at how small they are.

Ms. Lisa MacLeod: We're hoping that they're small after the recent couple of weeks we've seen with other government agencies in the province.

Mr. Salvatore Badali: You know what? It's a fair question. We will get you the information. I can say that you will not find any surprises. We're very cognizant of the public trust. Moreover, we're all donors—

Ms. Lisa MacLeod: Great. You'll be a shining example, then, to other agencies, I'm sure.

With the growth in your plans, not only into creating new connections with constituencies which you've not normally had at the ROM, and speaking to that \$1-million program that you've announced and bringing kids from underserved areas or underprivileged families to the ROM—I'm wondering if with that came a new technology or a new database system. Could you speak to the expenses not just in opening up the ROM but also to needs assessments that may have occurred, communications programs that may have been delivered as a result?

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Mr. William Thorsell: We haven't done the whole research on the whole demographics of Ontario to say who is not coming because of economic issues. We sort of know who they are and where they are. Probably we should do a more thorough look across the whole system.

When it comes to the schools, we rely on the school board to choose the schools. We don't choose the schools. We'll say to the school board, "We have this amount of bursary funds available for the schools that would allow 35 classes to come during the school year." They will select those classes for us. So they know better than we do.

When it comes to certain communities, we rely on the United Way. We say to the United Way, "Here are 1,000 family passes for free. You're better at finding those people than we are." Or we give them to the Toronto library system. At the libraries in certain parts of time, we have free passes that you pick up at the Toronto library. We delegate those decisions to people who are closer to those communities. But I suspect that we could do more, now that we're focusing so much more on Ontario because of the tourism situation. Now that we're getting beyond the bricks and mortar, we can focus more on identifying and communicating with those demographics.

Ms. Lisa MacLeod: Two questions come out of your response. The first is, who does that demographic study? Is it done in-house or do you have an outside consultant?

Mr. William Thorsell: We do our own studies, for the most part. However, we do have a consultant who does our surveys. So when we survey, we don't just survey people who come to the ROM. We did a major survey last year of people, as a random sample in Ontario, asking, "Do you go to the ROM? Where does it rank in your thoughts about what you might do?" Are there variations in the groups that are thinking about the ROM? That's where I use some of this data. We broke that down to say, "Let's also ask some particular immigrant communities, or South Asian and Chinese communities, if they're different." So when we do that, we do get a general sense about where people are relative to museum-going and then the ROM and what's stopping them from coming and so forth.

But we need to do more detailed demographic analysis. I think you're right about that.

Ms. Lisa MacLeod: Who undertook that for you? Which consultancy firm?

Mr. William Thorsell: Strategic Counsel.

Ms. Lisa MacLeod: Strategic Counsel? Would you be able to table their expenses?

Mr. William Thorsell: Yes, certainly.

Ms. Lisa MacLeod: Thank you. The other question I had is in terms of inputs. From your output for this \$1-million program that goes to the Toronto library as well as to the United Way, do you know what your inputs are from that and what the percentage might be of the tickets or the free passes that are given out?

Mr. William Thorsell: Yes, because we can track the tickets and the use of those tickets.

Ms. Lisa MacLeod: Right.

Mr. William Thorsell: So we follow that very closely. We very closely follow postal codes of people so we can tell where they're coming from and so forth.

When it comes to the Canadian citizenship program, there's a relatively low take-up. It might be that 40% of the people who get the pass will use it in the next year.

When it comes to United Way programs, it's much higher, because I think they are reaching people who they feel are likely—

Ms. Lisa MacLeod: Likely to attend—

Mr. William Thorsell: —and are frustrated at not being able to come. The virtue of working through United Way agencies and people like that is that they are so close to these communities that they can say, "Those families, if we give them tickets, will use them. They want to come."

Ms. Lisa MacLeod: Mr. Thorsell, would you mind giving this committee, when we move into report writing—this sounds like something that we might want to celebrate in this province, that you're opening up education, and perhaps we might be able to cite some statistics. As we move forward with report writing on what the intake is on that output, if you could provide us with statistics, perhaps—

Mr. William Thorsell: Yes, we'll have those.

Ms. Lisa MacLeod: —about who you're giving these passes to and how much is coming back, I think that might be quite relevant as we move forward.

One final question for me and then I'll defer to my colleague: I noticed in the background information that was provided to us that there was an audit done in 2008. Did the Minister of Culture initiate that or was that something that the ROM board of directors as well as the CEO undertook?

Mr. William Thorsell: I'm sorry—

Ms. Lisa MacLeod: The Ernst and Young audit.

Mr. Salvatore Badali: Oh, Ernst and Young are our auditors. They do an annual audit on the museum—

Ms. Lisa MacLeod: Okay. So it wasn't directed by the—

Mr. Salvatore Badali: No, no. It's just an ordinary financial audit for our statements, which are all public.

Ms. Lisa MacLeod: But I guess the minister has, within her mandate, the ability to direct an internal audit, but hasn't?

Mr. Salvatore Badali: I'm not aware. Bill?

Mr. William Thorsell: Yeah, we have.

Mr. Salvatore Badali: Every year, the auditors come and review us and report to the board.

Mr. William Thorsell: They audit our financial statements, and that's part of our annual report.

Ms. Lisa MacLeod: I know my colleague has some further questions, but again I just want to say thanks. I'm very proud of that institution, and I think that—

Mr. Salvatore Badali: Come and visit more often.

Ms. Lisa MacLeod: I do, I do. Listen, I spend more time in the children's part of the museum than anything else. So maybe I'll do that next summer. Thanks.

The Chair (Mrs. Julia Munro): Mr. Arnott.

Mr. Ted Arnott: Thank you very much for your presentation. I found it very interesting. Like my colleague from Kitchener—Conestoga and my colleague from Nepean—Carleton, I've had the opportunity to take my family to the ROM many, many times since our children were born. We've really enjoyed it. In fact, I was speaking to my 14-year-old son last night, who's now in grade 9, and he told me he's doing a project on the Royal Ontario Museum, at his request. So I was quite impressed with that, and I gave him some information from the binder that had been prepared.

Mr. Salvatore Badali: You did his homework for him.

Mr. Ted Arnott: Although he's in French immersion, so he needs it all translated into French. So I've got some more homework to do. But we do express our appreciation for the outstanding institution that has been created at the ROM and has put us on the map in a way that attracts tourists as well as demonstrates our culture to the whole world.

In this committee, of course, we have a scrutiny function that's very important and we have to ask some tough questions on behalf of the taxpayers with respect to the money that's spent, and so we certainly do appreciate your openness and your commitment to share those answers with us.

I wanted to ask a general question, first of all, about the state of the economy and how it has impacted on the ROM generally. Where have you seen opportunities in the last year that you've been able to exploit, notwithstanding the difficult economy that we've been facing?

Mr. William Thorsell: The effect of—

Mr. Salvatore Badali: The impact of the economy in general on the museum.

Mr. William Thorsell: We read a lot of stuff that's happening in the United States and elsewhere, and there has been quite a bit of talk about what will happen to museums at this time. We also have some information out of the United States on what's happening there.

First of all, the propensity of people to go to museums in darker economic time goes up. It's kind of a counter-intuitive thing. More people go to the movies in bad times, and the propensity to go to museums has gone up, according to the surveys in the United States, and we presented these to our board meeting in June. There's something about museums as being safe havens, places

of beauty, places nearby, the staycation phenomenon, places of trust and continuity where people who are often feeling uncertain about things will seek out the museum to go to as almost a refuge, as well as a high value close to home, if you want to put it that way.

We had one million visitors last year, which is substantially higher than anything we'd had before, about 40% higher than our norm before the project. We were making our business plan for this year and we thought we were going to hold it flat; because the economy is tanking, we were going to cut our sales and do that.

We're running a little ahead of plan right now. We had a very strong summer. I think the reasons for that are complex. The Dead Sea scrolls was a very powerful motivator and so forth, but we're also just finding that the museum seems to have a place in the life of the visitor and the family that ranks a little higher perhaps in tough times.

Where we see the impact is more on philanthropy and fundraising campaigns where all of the good-hearted people who have made such a big difference for all of us in Ontario, not only with the ROM but with all the other major institutions going on at the same time. It's astonishing that when you look at the "big eight" or something, including TIFF, the AGO, the Royal Conservatory of Music and so forth, probably \$1 billion has been raised in the private sector for these eight public institutions in the last seven or eight years.

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It's in the private sector, where we're looking at operational funds, membership drives and capital, that we see the impact, more so than on the attendance side from Ontario.

Unfortunately, the biggest impact for us of all of these things has been tourism. We've made great strides within our own province in reaching into communities and getting people to come. If those missing Americans weren't missing, we'd be way up here somewhere. But we're weathering this rather well.

The other thing that's different with the United States is that although people are starting to go, it's particularly the big museums that are holding their attendance. We used to envy their endowments. Now we don't envy their endowments because they lost—

Mr. Salvatore Badali: Well, we still like them.

Mr. William Thorsell: Well, okay. Thirty per cent on a billion-dollar endowment means that places like the Met and so forth are riding that crest to a degree that—we do have endowments, but we're not as dependent on them and we're able to carry on a little bit more consistently.

Mr. Mark Engstrom: I would just mention that places like the Field Museum of Natural History and so on had huge layoffs of staff because of the reduction in the value of their endowments and the ability to pay salaries. We did not have that impact at the ROM, or we managed to ameliorate it.

Mr. Ted Arnott: Many public institutions like universities are experiencing real challenges with respect to

their pensions for the employees. I notice you have a pension committee on your board. I assume your employees are paying into a defined benefit pension plan. That's the case? What is the state of your pension situation?

Mr. William Thorsell: We had a decline in our portfolio, like everybody else. We have stayed on top of that by increasing the contributions from our operating budget to our pension plan. We're moving steadily to correct that imbalance. I think we're at around 73%, 75% of where we should be. We used to be higher, we used to be lower, and now we're coming back up. We're having pretty good returns this year on our portfolio, with our money management team.

We are making a couple of changes in the benefits side of our pension plan in the area of early retirement. We're bringing the early retirement penalties, if you wish, into conformity with the norm—we used to be much more generous there—just to save a little bit of operating plan money. But there's nothing very substantial that would affect most of our retirees.

We have a plan to work back up and out of that situation and come into balance on that pension, and we're making progress on that.

Mr. Ted Arnott: I understand you to say that you're managing the issue. How long is it going to take to get you back to where you need to be in terms of ensuring that the pension plan is fully funded?

Mr. William Thorsell: It's a combination of three things: It's the markets; it's the interest—the long-term bond rate, if you will, which affects that calculation; and our own contribution rates. I would think that it may be about five years by the time we finally get back up there, depending on where the markets and the interest rates go. They will have a big effect on that. But we're—

Mr. Salvatore Badali: Interest rates, in particular, have a huge effect on defined benefit plans, more so than the market at times, so it's a bit of a guessing game. But I'll tell you, the board's pension committee is on this constantly.

Mr. Ted Arnott: But of course, there are laws and regulations that every pension plan—

Mr. Salvatore Badali: Oh, absolutely, and we have the actuaries in and we file all the reports and everything properly.

Mr. Ted Arnott: I heard this week that the University of Guelph, for example, needs changes to the pension laws by the end of this fiscal year or they're going to be in real trouble.

I'm looking at some of the information that was given to us by our research staff, and I certainly want to thank our legislative research for the fine work they do in this respect. It would appear that you received, in the fiscal year 2007-08, approximately \$31.7 million in operating funding. In the next year, the government grant went down to \$19 million—a huge deviation, year over year. Then in 2009-10, it appears to be going up to \$28 million. Can you explain or account for the huge deviations, year over year, and any challenges that—

Mr. Salvatore Badali: Sure, and I may turn to get some advice from our CFO.

The normal operating grant, prior to the increase that we got a number of months ago, thanks to the government, was about \$18 million a year. We had been running it at that rate for some time—it had been flatlined—so with inflation, of course, it was declining in real terms. We were running a deficit, and there was a deficit-reduction grant given to us, so I believe that, plus the normal \$18 million, accounts for the increase. And going forward—Bill, correct me—it's about \$27 million? So does that answer the question? Because we can—

Mr. Ted Arnott: Well, I appreciate the information. It still appears that you would have had a deficit in 2008-09, based on the information that's in front of me, of approximately \$5 million. Is that correct?

Interjection.

Mr. Salvatore Badali: Yes, that's right.

Mr. Ted Arnott: Okay. So next year you would hope to have a balanced budget, I gather? That would be the—

Mr. Salvatore Badali: Oh, yes. Absolutely.

The Chair (Mrs. Julia Munro): Thank you. We'll move on. Mr. Tabuns?

Mr. Peter Tabuns: Thank you, Madam Chair. Mr. Badali, gentlemen, thank you for being here this morning. Thank you for your presentation.

My colleagues have asked about attendance and your strategies there, and I won't belabour that point.

Energy costs: You're an agency of the province of Ontario, and the province has declared that it will take on climate change and do its bit. Can you tell me what the ROM is doing to reduce its energy consumption?

Mr. William Thorsell: We have an energy audit that we're doing and always do at the ROM. We have a big new building, of course, so there are energy implications to that. We've just done an energy audit in the last year. If you put everything on a computer, you can turn everybody's lights off, no matter whether they sit in their office or not, as we discovered.

We're very cognizant. It's a major cost to us. We built a large green roof, almost 10,000 square feet, on the west wing, partly to demonstrate what you can do with a green roof, but also to test to see whether—it's on the old wing—that will actually insulate us to some degree there. We're going to try to see whether we can measure that.

But the new building is designed, of course, for energy efficiency. It's a very well-insulated building. In the renovations of the old buildings, we're just finishing the renovation of the last wing of the heritage buildings. As we go into these buildings, we realize a number of things: The walls are not insulated. So for this room that we're just finishing this week, really, we had to go in and insulate the entire wing. We took out all the old windows that have been there since 1931 and put all new windows in that are energy-efficient. We've put extra storm windows inside those new windows, and then we put in a different heating system that's more efficient in those spaces.

So the renovation of the heritage wings has probably been the largest single contributor to the increased energy efficiency of the ROM. We have the usual programs of heating, lighting and cooling, but the renovation project has substantially increased the energy efficiency of the older buildings, because every one of those wings has had all new windows, all new storm windows, all new insulation, and in many cases, different heating systems that are much more efficient than we had before.

Mr. Peter Tabuns: So what were your targets for reducing energy consumption, and have they been met?

Mr. William Thorsell: You know, that's a good question. I don't think we've set a target, so it's a good thing we should do. I think we have reduced energy consumption, but—and maybe Glenn knows this better than I—whether we've set an actual target to reduce it further, I doubt. So that's something we should probably put in our business plan.

Mr. Peter Tabuns: Yes, I think that would be very useful.

How do your energy costs compare with other museums in Canada or in Ontario?

Mr. William Thorsell: I don't think that we've looked at either, so that's probably a good thing to do.

Mr. Peter Tabuns: And have you considered using renewable energy technologies like solar hot water or solar PV for your building?

Mr. William Thorsell: We looked at, when we were building the crystal, the issues of solar and so forth, but the capital costs and rate of return on those investments seemed to be prohibitive in terms of what we could do with our operating budget. We haven't returned to an examination of solar, but we did look at it at the time.

Mr. Peter Tabuns: Okay. I'd suggest that you take another look. With the province's feed-in tariff program, you may be able to get a return on solar power generation. That would be useful. Solar hot water is cost-competitive with natural gas. There are companies that will lease solar thermal to you now.

Mr. William Thorsell: Good suggestion.

Mr. Peter Tabuns: Anyway, it would be useful for you to be fairly aggressive on it, because if energy's a big part of your operating costs, you can do something about that.

The crystal itself—have you done a replacement reserve analysis over the next 20 to 30 years for the major components of the crystal? Are you setting aside funds to deal with capital costs for the crystal and other parts of the museum in the years to come?

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Mr. William Thorsell: The way we deal with capital maintenance issues is on an annual basis with the ministry. We submit a capital request separate from the operating budget every year for capital maintenance or improvements, whether it's the heritage buildings or new buildings, anything that we're doing. So we're not like a condominium corporation that will set aside a rainy day fund. We go every year and make a case. There is a budget for capital care every year, and we make our case

along with everyone else to say, "These are our priorities this year for capital care."

Mr. Peter Tabuns: Do you have an analysis of what you see as your capital needs over the next decade to two decades?

Mr. William Thorsell: Yes. We're doing a series of analyses. One is collections and research. One of the most important things behind the scenes of course is our responsibility to conserve and protect six million specimens and objects. There's a great variety of environmental requirements there, everything from storing silver to bronze to lacquers to big freezer rooms for animals' coats and birds and so forth. So we have spent millions of dollars in the last seven or eight years on enhancing the quality of our storage and collections care. We purchased a property in Oakville and built a specialized offsite storage facility, first of all for our fish collection, because they're all stored in alcohol bottles, and as a fire requirement we needed to get them out of that building in downtown Toronto. So we now have plans to expand that building.

Mark perhaps can speak to the analysis he's doing with our head of conservation, a whole analysis of our future needs, largely for collections care, and of course there are many more specimens and objects behind the scenes than there are in front of the scenes. So that rather invisible part is sort of our global responsibility. We have 52,000 items in our costume and textiles vault, for example, that go back thousands of years. The preservation of things like textiles is a large challenge. Many of these specimens in, say, fishes, birds etc. are very important to us.

So we do have a long-term plan. We're just updating it and we are making some applications now to expand Oakville. We have upgraded our collection spaces within the Toronto building very substantially in the last seven or eight years, even as we've been building the front-of-house space.

Do you have anything to add to that?

Mr. Mark Engstrom: I would just say that we are doing an overall assessment of all the collections. Certainly the collections and the research that's done on the collections are at the core of what the museum does, and it's our responsibility to preserve all those collections for the people of Ontario. So we're doing an overall, very detailed assessment of all of our spaces, the space that's available for the collections, the quality of the storage equipment and so on that's available for the collections, where we rank relative to other institutions in terms of the state of the care and where we need to upgrade and where we need to invest to improve the collection areas, and where we meet industry standards. That assessment actually will be done in a month.

Mr. Peter Tabuns: Have you had difficulty in the past with losing parts of your collection? Have there been situations in which the conditions in which they were stored didn't allow them to be preserved? I'll just say I've had, in conversation with people who have worked with the Ontario archives, complaints about papers and

other objects not being properly protected, thus losing parts of the archives. Have you had that kind of problem?

Mr. Mark Engstrom: Only in very minor cases. We've lost some specimens of minerals, for example, where mineral specimens were housed together with other minerals that were reactive. So sulphides give off sulphur gas and it may deteriorate lead specimens, that sort of thing. But that's been very minor. We are, though, looking at long-term issues—paper products is one, photographs is another one, which have special requirements for, in this case, wetter storage than others. Some collections require very dry storage, like silver. We have those actually in a room with 10% humidity. So we are not at the stage of having lost major collections because of improper care, but we do think it's a very opportune time to have that assessment done to make sure it doesn't occur in the future.

One of our biggest collections and an interesting one that you may not think about is that we have a very large collection of frozen tissues that are used for DNA analysis. As a matter of fact, I think we rank probably second in North America for the size of that tissue collection. It's a major source of information for huge projects like the Barcode of Life, which is sponsored by NSERC and international funding agencies, and for the Tree of Life project, which is a huge NSF-funded project in the United States. We have over 200,000 tissue samples. We keep them in ultra-cold freezers, but we're looking at converting that to a liquid nitrogen facility because it's an invaluable resource that you can never replace.

So we have a wide variety of kinds of collections, and no, we have not been in the position where we've lost any major segment of a collection because of the quality of collection storage.

Mr. Peter Tabuns: Thank you. The James Ossuary: What happened? Why was that object designated or treated as a real artifact when in fact it turned out not to be? What was the story?

Mr. William Thorsell: The James Ossuary is an ongoing story; it's a fascinating story. It came to our attention I guess it was in January 2002, when *Archaeology* magazine had the James Ossuary on its cover and told the story of its accidental discovery in a private collector's apartment in Jerusalem by a leading French authority in this field, a French academic who was going through this man's collection, found this ossuary, read the inscription, and then examined the ossuary and said, "This is real." Then there were several other archaeologists who looked at it and said, "Yes, there's no sign that this is not real." But there was some debate about it.

It so happened that coming up that fall, there were three large conventions going on in Toronto at the same time on religion and archaeology, overlapping conventions. All of the world's people interested in archaeology and religion were going to be in Toronto overlapping in October/November.

We heard from the editor of *Archaeology* magazine, who was convinced of the authenticity but acknowledged

there was doubt about this, and who said, "What about bringing it to Toronto in the context of that convention and putting it out there for debate and analysis, because it's such a provocative thought, that 'James, son of Joseph, brother of Jesus.' From what we know from a number of experts, it's legitimate, but we're not sure, so let's put it up for debate and let's have a debate about it."

So it was in that spirit that we went to our curators. They looked at it and said, "This is a credible claim of authenticity" for the James Ossuary. "Let's bring it here and then we'll have a number of events." We had a public forum during the display of the ossuary of people who were at these conferences, including the collector, but other people who were doubting, other people in the theatre who were doubting and saying, "Is this authentic?"

It got even more exciting because, of course, the ossuary arrived by cargo packed by the owner, not by a museum, in bubble wrap in a cardboard box, so when we opened it downstairs, it was broken into a couple of pieces. When they came to me that morning and said, "It's lying in a couple of pieces downstairs," my first answer was, "That's newsy. That's going to be news."

We went down and looked at it. What we did, with their permission, was put it back together. We had one of our conservators, who is very good in the area of pottery, ceramics, this kind of thing, actually put it back together under Mark's supervision and with their permission. In the course of doing that very intimate work, she'd looked at it. We discovered a number of carvings that weren't otherwise visible, and then we went into the actual language: "James, son of Joseph, brother of Jesus." We went in with microscopes. There was no evidence of tampering inside. There's a patina on these boxes, and the box itself had been cleaned, but getting down into the writing is harder. You can go in with your microscopes. There was no evidence that part was added later or that the whole thing was added later. It seemed to be contemporaneous with the box. So our own staff from the conservators through to the curators were, and I think still are, of the belief that this is an authentic artifact.

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Now, we went through the display; we went through the forum where you had people saying, "Well, the writing on this side is a little bit different style than the writing on that side. It looks like it was written by somebody else"—or not. All the academics debated that, and it was in the context of exploration that we brought this forward and the context precisely of those conventions of having everybody look at this and try to determine whether this was so.

Then, according to our contract, we sent it back to Israel, to the owner, who was subsequently arrested. The ossuary was taken from him by the Israel Antiquities Authority. They examined it, and after a number of months, they issued an opinion that this had been forged using new techniques that no one had ever heard of before to determine these things. So we looked at that and said, "Well, what is that technique? It's not a tech-

nical technique that we've ever heard of, and no one else has ever used." So our staff remains doubtful of their conclusion, because it wasn't based on any known way of evaluating these things.

Then Mr. Golan was indicted, not only for this but for other so-called fakes, and the trial has been going on for several years. We have made a deposition from our staff about their views of this, and just before Christmas, the judge in the case said to the prosecution, "Unless you've got more, I'm dismissing this case, because so far you haven't given me anything to justify the continuing prosecution."

I've lost track of exactly whether that's come back to court right now. It was an interesting and complex case, but it was done in the context of exploration of a credible claim. This is where I think the museum should do more of that. The museum should be questioning, posing questions, offering explorations as long as it's a credible claim—it wasn't a nutcase claim. So we'll see where it lands at the end of the day.

Mr. Mark Engstrom: I would add one thing, and that's that it has been examined recently by a team in Germany, and they've declared that it's authentic. So the debate is going on. Certainly our curators do remain convinced and our conservators remained convinced that at least there is no substantive reason to doubt its authenticity.

Mr. Peter Tabuns: Thank you. I don't have any further questions at this point.

The Chair (Mrs. Julia Munro): Okay, thank you very much. Yes, Mr. Rinaldi.

Mr. Lou Rinaldi: Just a clarification: I'm delighted at the programs you have to distribute some tickets through the United Way. I think that the United Way, at least at my end of the world, does a fantastic job of support. You said 1,000 tickets. Is that split among all United Ways or how is that done? I'm just curious.

Mr. Salvatore Badali: The question is, how many tickets go to the United Way? We said 1,000, and how do they distribute them?

Mr. Lou Rinaldi: Or to what United Ways?

Mr. Salvatore Badali: Or to what United Way agencies? Do we know which? We give to the central one.

Mr. William Thorsell: We give the United Way 500 passes a month.

Mr. Lou Rinaldi: The United Way of Toronto or United Ways, period?

Mr. William Thorsell: I'm sorry I can't hear you.

Mr. Lou Rinaldi: United Way of Toronto or United Ways period?

Mr. William Thorsell: Yes, United Way of Toronto.

Mr. Lou Rinaldi: So what about the other United Ways?

Mr. William Thorsell: Right now, it's focused on the United Way of Toronto.

Mr. Lou Rinaldi: I'm disappointed. We have a major provincial attraction which we're all proud of, and Toronto is a great contributor, I'm not trying to take

anything away, but I know that—and I guess I'm being parochial—some folks from my part of the province contribute to this greatly. I would strongly encourage that maybe kids, families or interest groups from our communities would enjoy it, maybe not in vast numbers, but when I hear 500 a month for Toronto, which I'm sure are well taken up and used well, I would encourage you to maybe expand that or refigure that number.

Mr. Salvatore Badali: Sir, your question is a good question, and when this proposal was brought to the board, I believe the board did that—because I don't remember asking—"What is the goal?" And the answer was, "We're starting here because we want to see how it works." So I don't think the museum management has definitively said, "We will not do anything more in the future etc.," but this is new for us. We'd never done it. I give full credit to the staff for bringing it forward and going forward. We'll be examining that.

Mr. Lou Rinaldi: Oh, it's a great program. Thank you.

The Chair (Mrs. Julia Munro): Mr. Johnson?

Mr. Rick Johnson: You talk about the outreach that you're doing, the digital classrooms and stuff. I was on school boards for about 12 years, so I have a fair knowledge of the programs that have gone on, and I know that they're very much appreciated in schools across Ontario.

The school board that I represented was Haliburton, Kawartha Lakes, that area. I know for a school to come for a trip, it either has to be an overnighter or they get to spend an hour by the time they drive in from Haliburton because it's a three-hour drive down.

Many years ago, when I was growing up there was the centennial year. We had the centennial train which went across Canada and stopped. It was like a museum of Canada, and I still remember that vividly. Do you have something like that that goes out so that more students and people in the other areas of Ontario who don't get here—you talked earlier about the Jane and Finch area coming down and the impact it has. I know that for a lot of young people in this province and adults—and I recall something about a tractor-trailer years ago. Anyway, if you could talk a bit about that.

Mr. William Thorsell: We do have an outreach program that goes to schools, shopping centres and libraries around the province. School kits—they're great big crates that are like displays that can travel on a truck, you can take the kit apart and you can put it right in a school or you can put it in a shopping centre. We have something called the Starlab which goes out, which is an inflatable sort of Starlab that people go into.

Last year, by our count, we had about 490,000 people in Ontario who visited these outreach programs and these big crate kits. We have one, say, for example, on First Nations beadwork that goes on. It's a whole very well done exhibit on beadwork of the First Nations and it travels around Ontario. We have a Starlab, and we have others on Egypt and so forth. So this is the three-dimensional way of bringing the museum closer to classrooms and to communities, largely through shopping centres.

I think when we get our virtual classroom capacity up—and the schools have to be able to have that too, but many of them have it now or are getting it—what we'd like to do, if we're doing a piece on palaeontology, for example, where we can do the curator in the vaults, not just in the gallery but down in the vaults—and we've tested this out where he's got three kinds of skulls and shows you the different teeth and all this—we could then actually supply travelling materials so that the people in the classroom would have the materials that they're seeing from the vault in their classroom while we're doing the virtual classroom. So we can have both real and not real.

The fact is that the museum's competitive advantage, if you wish, is that it has stuff as well as ideas, so if we can get the collections and specimens into more hands outside of the museum itself as well as talk to them about it, that's the golden mean, I think.

So in our digital program within Ontario, we're going to try to match up, in the schools, travelling exhibitions that line up with their education programs so that if you're in your school and you happen to be doing Egypt, you can actually have some artifacts in the classroom there in Peterborough at the same time that you're listening to somebody in Toronto talk about them and show you things from the museum itself. I think it's a huge opportunity for us to extend the museum in a real way outside of Toronto.

Mr. Rick Johnson: That's great. In my past career, I had the fortune of travelling all over Canada and spending time in areas. I managed to get into most of the big museums in this country and several in the States, and the ROM is just a jewel. I visited it in the 1970s, the 1980s, the 1990s and just recently, and you're to be commended for what we have and how well it's preserved, which leads me to my final—this will be my silly question of the day. Somebody asked me this: "If there was ever a fire in the building and you could only grab one thing to take out—

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Mr. William Thorsell: I'm sorry, what was the question?

Mr. Salvatore Badali: If there's a fire in the building and there's only one thing we can take out, what do we take?

Mr. William Thorsell: I'd take something flammable first, because not everything is flammable, so I guess, something that you could actually get out quickly, right?

Mr. Rick Johnson: Yes, because it is such a valuable collection, and so much of the history of this province and this country is in there. I know it's well—

Mr. William Thorsell: Maybe I'd take out "The Death of Wolfe," just because it's a Canadian icon and there are only four of them in the world—a painting of the death of Wolfe—or something of that nature, because I could get it fast enough and get it out the front door fast enough, I think.

Mr. Rick Johnson: Okay. Thank you.

Mr. Mark Engstrom: I would take a different specimen. I work on mammals, so I would take a specimen of a deer mouse, the Maya deer mouse, from Guatemala, the only one in the world. It's the specimen from which the species was named, and it resides in the vault. So I'd be running down to grab a rat.

Mr. Salvatore Badali: But we hope we never have to do this. I mean, there are sprinkler systems, there is live security 24 hours a day, and plans with Toronto Fire. We do not want to have a problem.

Mr. Rick Johnson: I appreciate that. Like I said, it was my silly question of the day.

Mrs. Laura Albanese: Madam Chair, I don't know if I have time for one more question on our behalf.

The Chair (Mrs. Julia Munro): Oh, yes, certainly, Ms. Albanese.

Mrs. Laura Albanese: I, too, like many Canadians, have visited the ROM many times—when I first arrived, and then as a parent, and as a television reporter. One of the most interesting experiences was also going to the planetarium, which was then sold, I believe, to the University of Toronto. I'm wondering what the terms are about the planetarium, and why was the sale necessary?

Mr. William Thorsell: First of all, the planetarium opened in 1968, the McLaughlin Planetarium. It was closed in 1995, after the first round of cuts to the ROM's budget in the mid-1990s—1993, 1994 and 1995. It was closed for a couple of reasons, I think—I wasn't there, but I've read the history.

First of all, the attendance at the planetarium was falling off very substantially. The world had moved on beyond the technical thrills of the 1968 planetarium. We had had 2001 and Star Wars and all sorts of things that could communicate about space. The place of the planetarium in the lives of students, largely, was no longer there and required a substantial operating subsidy from the ROM to keep the doors open.

So when they were faced with their first round of budget cuts, they did what I think probably good management ultimately has to do and said, "What's the core mission? If we have to cut quite a bit, do we cut everything and just go down like this, or do we focus on the core mission?" They made, I think, a reasonable judgment at that time that the core mission was the museum, and they closed the planetarium. It was leased out for a number of years after that to other people and not used by the ROM, except for storage and leasing out.

When we started the Renaissance ROM project, we looked at that asset, which is a piece or property that's very valuable and useful to us in the future. We heard from a lot of people who said, "Reopen the planetarium." But actually, if you looked at that, you would realize that there's no way to sustain a building of that age and that technology in a marketplace where it would pay for itself, and no one was likely to give us the money to subsidize it.

We actually took a position, and we do have a position on this that we have communicated, that there is certainly room in Toronto for what we call a centre for cosmology,

based on the academic work being done in Waterloo at the Perimeter Institute and at the University of Toronto. There is certainly a possibility in Toronto for a centre for cosmology, using current technologies and display communication, that could capture what is happening with particle physics, cosmology and all the things that are happening with the Hubble and so forth that are way beyond what that planetarium could have done.

Nevertheless, we looked at that property and said, "We would like to redevelop that site to achieve a couple of things: one, to add space to the ROM for the future, so that in the future we can have additional space for education, for offices, for whatever the expansion needs of the museum might be; and second of all, to redevelop it in a way that leaves us with a contribution for the remaking of the older buildings and the new."

So our business plan foresaw what we called a joint development of the site. At the time, we thought it would be the University of Toronto, ROM and a private sector condominium, so we'd have a tripartite redevelopment, and then we would get our space, we would get cash for Renaissance ROM, and the university would use it for their own expansion. That was our first effort to redevelop, which didn't get very far because there was a huge amount of opposition to any kind of private sector condominium participation there, no matter the height, no matter the nature—just the idea that there shouldn't be any private sector participation in that property.

So we went back to the well and eventually, being left with our partner, the University of Toronto, which has major needs for expansion there for music, for law, and maybe for other purposes, we decided that the clean way to do this—because, in a sense, I suppose they had the money and we didn't—was to sell them the site for a very good return for the ROM, more than we anticipated getting from the actual condominium sale, in some ways, in terms of cash, and then have the ROM have the right to come back in the site up to 25,000 square feet in any development that they did there. So we've retained our options for expansion and our rights to expansion on the site in the future, but through a long-term lease arrangement. So we can build out the museum that will fit in the back of our building, but we've not given them the rights, over time, to redevelop the whole precinct as a unit with our interests involved.

We were able to make a deal with them where they paid \$22 million in cash to us. We closed last March. We used that, plus additional pledge payments, to reduce our capital debt by about \$29 million last year alone. We are going to be in there for the next three years at no rent or cost to ourselves, just the status quo—at least three to five years. We will be consulted on any plans the university has to develop the site. We have the right to work with them on design for ROM space that will be contiguous and fit into our building in the future.

It turned out to be another way to skin the cat, and I think it's turned out to be a very good outcome for both the university and the ROM, and I think, in the long run, for the city.

Mrs. Laura Albanese: Thank you for that answer and for all your explanations. It's been most interesting.

The Chair (Mrs. Julia Munro): Thank you. Any further questions here? Yes, Ms. MacLeod.

Ms. Lisa MacLeod: Thank you, Madam Chair. I'll be splitting my time with my colleague, the culture critic for the opposition.

I have a quick question for you with respect to your future financial planning. This time next year, the HST will be implemented. We've been contacted by several cultural groups across the province indicating that this is going to be devastating to their ticket prices. I'm also wondering about your input costs. Have you, at this point in time, done any planning on the financial impact on the ROM with respect to the HST?

Mr. Salvatore Badali: Thank you for the question. We are looking at that, and Bill and Glenn can correct me. Next year, assuming the HST is implemented on July 1 or whatever, our ticket prices will probably go up. In terms of inputs, because we get input tax credits back, it won't have an impact on our purchases, really. It's more on the ticket price.

We've looked at it. We don't think that there will be a dramatic change in our visitor attendance, for example. You know, the jury's still out; we're not sure. But we think we offer very good value for our visitors. We do a lot of exit surveys and independent work, and people say, "Hey, I get good value for my money here." Do any of us want to pay more? Of course, none of us wants to pay more for anything, but it's government policy. We're going to do our best to make sure that there's continuing access to the institution.

Ms. Lisa MacLeod: We talked earlier about Strategic Counsel doing a demographic study for you. We looked in the briefing background material. We've noticed that North Star has done some work for you. Consultancy fees will rise by 8%. How can you control and curb those costs when those fees are going to be 8% higher?

I understand that you're talking about tax credits, but you'll also understand and appreciate that you're not getting a 100% tax credit. That should have about a 1.16 inflationary increase in your budgets, from what we're seeing from different organizations who have done these studies.

I'm just wondering if you've accounted for the—what is your tax credit? Is it 78%?

Mr. Bill Graesser: We have 100%

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Ms. Lisa MacLeod: Okay, so the ROM gets 100%. But with all of the increased costs, with your consultancy fees, when they charge you 8% more, if it's built into the cost, for example, you won't be able to recover that. Is it just on utilities?

Mr. Bill Graesser: I believe they would have to—

The Chair (Mrs. Julia Munro): Excuse me, could I ask you to come forward so that your comments are in Hansard? I'm sorry.

Mr. Bill Graesser: I believe the consultant would have to charge 8% separately as part of the GST plus

PST, and we would get 100% back. For GST purposes, we're treated as a commercial organization. Many not-for-profit organizations only receive 50% input tax credit. We receive 100%. So right now, we do not see any major impact on our costs. Where we see it is the admission prices that we have to pass on to our visitors.

Ms. Lisa MacLeod: What's your admission price for a family of four?

Mr. Bill Graesser: Two adults would be \$44, plus \$30 for two children, so \$74. That includes—

Ms. Lisa MacLeod: It's quite expensive for a middle-income family, isn't it? So you increase the price by 8%?

Mr. Salvatore Badali: There's no question. But, for example, if I were to go with my family—I have a more expensive membership. What's our membership price, Bill?

Mr. Bill Graesser: It's \$130.

Mr. Salvatore Badali: It's \$130 for a membership, for a family of four to come as many times in the year as they want. So we try to be very conscious of the costs and the access. Believe me, we in the board challenge our management: How do our costs compare to everything else? We don't want to be an outlier. We're not there to make money. We're there to ensure that people—

Ms. Lisa MacLeod: But you certainly don't want to lose it, especially with unstable government funding, when we've seen it decline from \$31 million to \$19 million, then it's up to \$28 million. You certainly don't want to lose any of the funding from that ticket price.

The question I'm asking is, if you're looking at \$74 for a typical family of four, two parents and two children—let's say they're coming in from Barrie. It's \$74 plus the gas that they're going to have pay HST on, plus the Tim Hortons coffee on the way down from Barrie. I guess you get to a point, are parents going to reconsider going to the ROM?

With your \$1-million program where you go out to the schools, to the United Way and to the libraries, locally—is that going to have an impact on that very valuable program? Are you going to now have to move the threshold into what is unaffordable? And what kind of impact is that going to have on the ROM's operations after July 1, 2010?

Mr. Salvatore Badali: We don't have a crystal ball; none of us does. We think that as long as we provide really compelling value for money, people will continue to go. Will we see a drop in attendance? We hope not. We're not forecasting a major drop in attendance.

With respect to the government grants, we've been blessed this year with that increase. That's an increase to the base. I'll tell you, we are very grateful for that because it just provides us with some planning stability in the market.

Ms. Lisa MacLeod: So you're expecting that this is going to be stable funding here on in?

Mr. Salvatore Badali: We do.

Ms. Lisa MacLeod: Will you drop your ticket price as a result of that, so that the 8% won't be impacted?

Mr. Salvatore Badali: Our management, at our next board meeting, will talk to us about that, but right now I'm not anticipating that we're going to drop our ticket price by 8%. Our funds from the government are not going up that we know of.

Ms. Lisa MacLeod: Before I give the floor to my colleague the culture critic, my final question is, is it possible for you to table an impact analysis on the HST with this committee for the purpose of report writing?

Mr. William Thorsell: To do what?

Mr. Salvatore Badali: Can we table an impact analysis on the HST?

Ms. Lisa MacLeod: On the ticket prices and what it might be on that \$1-million program.

Mr. William Thorsell: Yes, we will do that for our board. We haven't made our recommendation to the board yet on what to do with ticket prices next year, but when we do, we will do an estimate, some kind of judgment, on what effect that would have on attendance, if any. We do it in the context, too, of the family membership costs or individual membership costs. So where the price to come for one time—say, \$74 for four people—is equivalent—we walk the lines with our staff and say, "Why are you spending \$74 when you could spend \$139 to come all year round for—"

Ms. Lisa MacLeod: That's fair, but I think, to Ms. Pendergast's point, that if you're coming from Kitchener, or in my case, if you're coming from Ottawa or anywhere else in the province, people are penny-pinching in these tough economic times. Hey, you know, if I can spend \$74 rather than \$139, I'm gonna do it.

Mr. William Thorsell: Maybe; some do.

Ms. Lisa MacLeod: Because that's how we balance our budgets in the province. I would urge you to do an impact analysis. I'd also urge you to share it with this committee as we proceed in report writing. In order to help you achieve the sustainable funding that the ROM needs, it's best for us to make those recommendations to the minister.

Mr. William Thorsell: Yes, can do.

Mr. Salvatore Badali: Sure, we can do that.

Ms. Lisa MacLeod: Okay, thank you.

The Chair (Mrs. Julia Munro): Mr. Arnott.

Mr. Ted Arnott: I would like to now explore with you some questions I have with respect to your memorandum of understanding, upon which you operate your affairs vis-à-vis the government. It appears to me, from what I understand, that that memorandum of understanding that you've operated under since 2005 is about to expire in 2010. Is that correct, that it's a five-year memorandum of understanding?

Mr. William Thorsell: I believe that's so.

Mr. Salvatore Badali: Yes. Glenn, our memorandum of understanding, is it a five-year term normally?

Mr. Glenn Dobbin: I'll have to check.

Mr. Salvatore Badali: We'll have to check.

Mr. Glenn Dobbin: It's certainly due for renewal whenever there's a change in—

Mr. Ted Arnott: What consultation took place between the ROM and the government prior to the establishment of the first memorandum of understanding upon which you currently operate?

Mr. William Thorsell: We went back and forth with the ministry several times on the language in the MOU.

Mr. Ted Arnott: How do you feel that it has worked over the last four, almost five years?

Mr. William Thorsell: I think it has provoked more organized communication back and forth between us. We do make a practice of going with our chair to meet with the ministry, to update them, to inform them of what we're doing. They have installed new systems of working with the development of the business plan for all their agencies. In the last couple of years, we now consult with the ministry far earlier in the stage of developing our business plan, rather than just sort of giving it to them at a certain date. So there's a lot more consultation back and forth before we finally take the final plan to the board with the ministry. I think the communication both ways has strengthened. They have a lot more time to have input into the development of our business plan than they used to. I think it has been a very healthy relationship in that regard.

Mr. Ted Arnott: Do you feel that it has constrained you in any way, that it has made it more difficult for you to do your core business or do your job or—

Mr. William Thorsell: No. We have had a lot of trust, I guess is how I'd put it, from the ministry over the last number of years. At the same time as we went through all this construction, however, there were going to be new costs. We were running some operating deficits during construction. We never closed during construction. We were only half open, so our incomes went down. It has been a very healthy relationship with the ministry.

Mr. Salvatore Badali: Right. We truly try to operate formally and informally with the ministry on the basis of "no surprises." Staff have a very good working relationship with them. I know our CEO and I will sit down periodically with our minister, to bring the minister up to speed as to what's going on. Again, it's really "no surprises." We have an excellent working relationship at the staff level and at the ministerial level with the Ministry of Culture. We're very lucky that way.

Mr. Ted Arnott: My colleague from Nepean-Carleton earlier made reference to, and asked a question about, the audit requirement. I see, as point number 11 in the memorandum of understanding, there is a requirement for an annual audit of your financial affairs. But also it's my understanding that there is an opportunity for the minister or the Management Board of Cabinet to initiate a thorough review or program evaluation. But I gather that has not been done in the four and a half—or four years, I guess, almost five years of this current—

Mr. Salvatore Badali: No, I don't believe so.

Mr. Ted Arnott: Yet it's part of the memorandum of understanding, so the minister has the power to do this—

Mr. Salvatore Badali: Has the power to, yes.

Mr. Ted Arnott: —but has chosen not to. Do you find that somewhat puzzling?

Mr. Salvatore Badali: No. Our financial audit is a pretty thorough audit. The audit committee of the board sits down with the auditors in private—no management present—and we have, "Okay, you've given us a clean opinion on our financial statements. Now, is there something that you, the auditors, would like to tell us, anything about anything?" Every year, it's as clean as a whistle, which is a testament to the management of the institution.

We, in the board, do our due diligence, I believe. We probe hard, and the answers have always been very positive. Those of us who are on the board and have been volunteers there for many, many years tend to know the place pretty well. The walls talk. When I go in, I know a lot of the guards. I know what's going on. The receptionist guard at the staff entrance will say, "We've got these groups coming in tonight." We have a pretty good idea, but to the extent that if the ministry ever wanted to do a special audit on us, we have nothing to hide. We welcome everything. If anyone has suggestions for us that are good suggestions, we'll embrace them.

Mr. Ted Arnott: Okay. Thank you very much.

The Chair (Mrs. Julia Munro): Mr. Tabuns?

Mr. Peter Tabuns: I have no further questions.

The Chair (Mrs. Julia Munro): I think that concludes the questions from the members of the committee. We did everybody correctly here.

I want to take this opportunity to thank you very much for coming, and since it has been an opportunity for individual members to talk about their personal relationships with the ROM, I felt that it was an opportunity for me. I did a little work. I've been a member since 1979, so I want to thank you on behalf of not only myself, but certainly my family. We would fit that demographic of why people come to the ROM, and I want to thank you very much.

Mr. Salvatore Badali: Thank you, and we really appreciate the opportunity to be here to explain what goes on at the museum. If any of you want to come by, the chair's tour is a very special tour. You're more than welcome. We're very proud of the institution. Thank you for your support. Any recommendations, anything that we can do to improve, that's our mission and we'd love to hear from you. Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. The committee stands recessed until 1 p.m.

The committee recessed from 1111 to 1301.

EARTH RANGERS FOUNDATION

SCHAD FOUNDATION

The Chair (Mrs. Julia Munro): Good afternoon, ladies and gentlemen, and welcome to the Standing Committee on Government Agencies. We're going to continue our session on the Royal Ontario Museum with our stakeholders presentations this afternoon.

To begin, I'd like to invite Peter Kendall to come forward as the executive director of the Earth Rangers Foundation.

Interjection.

The Chair (Mrs. Julia Munro): Yes, choose where you'd like to sit. The microphone will be on automatically. Welcome to the committee. As you know, we have 30 minutes in which to discuss this agency. You have up to 30 minutes and whatever time is left over will be divided amongst the caucuses. Please begin.

Mr. Peter Kendall: Thank you. My name is Peter Kendall, and I'm the executive director of Earth Rangers and also of the Schad Foundation, and representing both organizations.

Just a little bit of background on Earth Rangers: We operate education programs in schools and at community venues across Ontario. The programs use live animals and stories of what's happening to these animals' habitats to communicate to the kids the importance of biodiversity and inspire them to adopt more sustainable practices. Our reach has been doubling every year, and this year, with the help of the ROM, we're going to reach approximately 350,000 children and their families.

The partnership with the ROM has been a fantastic one for Earth Rangers, and a natural fit. In the Schad Gallery of Biodiversity at the ROM, we combine the great messaging of the gallery and the rich collections and specimens with our live shows in the Earth Rangers Studio within the gallery, and we find it's a very effective way to communicate our core message.

Since the gallery opened up in May, we've seen near-capacity crowds through the studio and through the gallery itself. We really couldn't be more excited about our partnership with the ROM. As I mentioned earlier, it's going to help us extend our reach, through the shows themselves, to an additional 200,000 kids and their families a year and to the nearly one million visitors who are visiting the ROM each year as well.

The team at the ROM has been fabulous to work with as an external stakeholder. Really, when we first envisioned this gallery and started talking to them, I think that they'd said it would take about three years to build. We pushed that forward and asked if they could be done in about half that time, and not only were they able to do that but were able to produce what was really a world-class product. That's my opening statement.

The Chair (Mrs. Julia Munro): Thank you very much. Mr. Tabuns, we'll start with you.

Mr. Peter Tabuns: Peter, thanks for the presentation. Where do you see this partnership with the ROM going in the next number of years?

Mr. Peter Kendall: This year we're adding a new program starting in October where we're actually doing our shows to school groups. It's a longer show than we're offering right now, but to the school groups visiting the ROM, so that will help us to extend the shows as well. We're also adding this year a larger community show, so this is a half-hour show in their large, 300-seat theatre. There has also been some talk at the ROM about creating

a new centre for biodiversity as well. If that moves forward, we'd like to see how Earth Rangers can fit within that.

Mr. Peter Tabuns: Can you tell us how this whole program is promoted in the schools and how effective you think the program has been—the outreach program; I don't mean the program you're running.

Mr. Peter Kendall: The outreach program in general?

Mr. Peter Tabuns: Yes.

Mr. Peter Kendall: We measure effectiveness in a number of ways. First, we do a lot of exit interviews with the kids after the shows in the schools, and certainly we're finding that they are getting our core message. We used to run action programming in the schools as well, so composting, recycling and energy reduction programs. We found that about 10% of the schools that we presented to would get involved in those types of programs. In October of this year we're launching a new program in partnership with the Ontario Ministry of Natural Resources called Bring Back the Wild, where we're encouraging kids to raise funds to help us to plant trees in Ontario parks and help to create habitat for animals that way. With that program, we'll start measuring uptake from the number of kids we present to with the number of kids that get involved in that program as well.

Mr. Peter Tabuns: In your program, you're focusing on biodiversity. Do you talk about climate change and its impact on biodiversity?

Mr. Peter Kendall: Yes, and certainly the show at the ROM right now, which is called The Power of One, is more focused on climate change than our school programs, which tend to be a little bit more heavily focused on the biodiversity issue. But the ROM show uses these two kids in a video presentation—we do the animal piece, then two kids talking to each other about their individual footprint, and we use an analogy where we fill up these black balloons with gas, which represents the amount of greenhouse gas the kid produces in a year, and then as they come up with ideas on how to reduce their footprint they start breaking the balloons with needles.

Mr. Peter Tabuns: What kid doesn't like that?

The whole question of biodiversity loss: Do you do much analysis of how biodiversity is being reduced? Do you talk about sprawl, habitat destruction? How do you talk about cause and effect?

Mr. Peter Kendall: Because our program, especially when we're moving into the Bring Back the Wild program, is about encouraging the kids to get involved with reclaiming and restoring lands in the south, we do talk a lot about the loss due to inappropriate development and also degradation of various habitats. It's a bit of a new program for us as well, so our messaging on that is still developing. It's something we're working with both the ROM and the Nature Conservancy on developing.

Mr. Peter Tabuns: Thank you. I don't have any other questions.

The Chair (Mrs. Julia Munro): Ms. Albanese.

Mrs. Laura Albanese: Thank you for your presentation. I wanted to ask: How frequent are your shows at the ROM?

Mr. Peter Kendall: The new schedule starting now, we're running Tuesday to Friday for primarily school groups—and, when we don't have school groups, the general public—during the day, and then on Saturdays for pretty much the whole day as well.

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Mrs. Laura Albanese: You spoke about the number of kids you will reach. How many have you reached thus far?

Mr. Peter Kendall: I don't have that exact number at my fingertips.

Mrs. Laura Albanese: Okay. You also spoke about where you see the relationship, the partnership going in the future, but could you elaborate on the partnership as it is set now—what kind of partnership you have established now with the ROM?

Mr. Peter Kendall: Through the Schad Foundation, we helped to fund the biodiversity gallery at the ROM, and then with Earth Rangers we have partial use of the Earth Rangers Studio within that gallery to do our shows out of. The ROM will also be partially funding us in the larger community events that we're going to be offering out of the 300-seat theatre.

Mrs. Laura Albanese: One last question: You are encouraging, obviously, kids to think about the environment. In your words, how does Earth Rangers and its programming forward the museum's environmental education agenda?

Mr. Peter Kendall: I can only really speak to the gallery—it's the only one that I know—and the main message of that gallery is that life is diverse and that life is also in crisis. As you go through the gallery, you certainly learn about the incredible richness of life and how our actions are impacting that biodiversity. It's the same theme that we carry through our shows at the ROM, as well as encouraging the public to get involved and take on more sustainable activities to help make a difference.

Mrs. Laura Albanese: I have one more question. You mentioned you have live animals at the ROM during the live show. Can you illustrate to someone who has never participated in a show what kind of animals are there? What can one anticipate?

Mr. Peter Kendall: Yes. We have four different shows that we run there. One is with a lemur. Then we have an African serval cat, an American kestrel and snowy owls. We use each of those animals to talk about different regions around the world. With the lemur, for example, we do a lot of natural history about lemurs and about Madagascar, but then we talk about the incredible crisis going on in Madagascar: About 10% of the land is left now as workable habitat for lemurs, and pretty much all the species down there now are threatened. Really, nobody knows if any of the lemurs are going to exist in Madagascar with the political situation being what it is down there. Then we use that situation, basically, to say

to the kids, "Let's not let this happen here in Ontario and here in Canada." We've got an incredible wealth of resources here in Canada still and, really, a responsibility to ensure that we protect those and that they're around for the next generation.

Mrs. Laura Albanese: Thank you, Madame Chair, but I believe my colleague would have one further question.

The Chair (Mrs. Julia Munro): Mr. Johnson.

Mr. Rick Johnson: I know a lot of the school boards across the province now are running eco-school projects. Have you worked on the curriculum side of things, to be involved and link up with that?

Mr. Peter Kendall: We have curriculum resources that we leave for the teachers that are available on our website, which we developed with John Mighton out of Jump Math. They're sort of math-related environment activities. We don't get involved anymore in school-based action programming like an eco-schools program, but it's a fabulous program as well.

Mr. Rick Johnson: So when schools and classrooms come in, there are materials and stuff that teachers can access?

Mr. Peter Kendall: For sure. There are both hard copies, which we have available, and then they can download it all from our website.

Mr. Rick Johnson: Great. Thank you.

The Chair (Mrs. Julia Munro): Any other questions?

That completes the questions. Thank you so much for coming and telling us a little bit more about the relationship between the ROM and Earth Rangers.

ATTRACTIONS ONTARIO

The Chair (Mrs. Julia Munro): I'd now like to ask Troy Young, the executive director of Attractions Ontario, to come forward. Good afternoon and welcome to the committee.

Mr. Troy Young: Thank you. Madam Chairperson, members of the committee, thank you for giving me this opportunity to speak today on behalf of the ROM. I'm going to start out just by letting you know a little bit about who Attractions Ontario is, what we do and why we have a relationship with the ROM. Attractions Ontario is a not-for-profit agency that has been in operation for 26 years and whose purpose is to assist the various tourism attractions in Ontario in marketing themselves to the travelling consumer.

Tourism is a major business in Ontario, worth \$22 billion in receipts, responsible for 3.8% of Ontario's gross domestic product and employing 3% of the province's workforce, representing 200,000 direct jobs. It is the only industry in every riding in the province. The government of Ontario takes in \$2.6 billion in tax revenue from tourism-related activities; 3.7% of Ontario's tax revenues are derived from tourism. It ranks eighth in Ontario's exports, and Ontarians spend 7.1% of their disposable income on tourism.

Attractions Ontario is positioned to assist the provincial government and our members to promote their offerings to the travelling public. We are strongly focused on selling Ontario to Ontarians. We do this through a variety of avenues, the most effective being our annual Passport Magazine and Coupon Book, which has a circulation of 1.1 million copies throughout Ontario and parts of the United States. We have been publishing this guide for the past 20 years. Last year, by tracking the coupon redemptions from our book, we accounted for a minimum impact to Ontario's tourism receipts of \$20 million. This does not account for the additional value that the display advertising had, it does not take into account foreign tourists that used the guide, nor does it capture all the coupons used, as a number of members did not report. We estimate that our book's true impact on Ontario's tourism receipts is closer to \$35 million when all these external factors are included.

We also publish a field trip planner, *Are We There Yet?*, for schools and youth groups. We have a website where prospective travellers can view current special events, research attractions in an area and even purchase tickets or book hotel rooms. We also provide other assistance and research as well as aggregating interests of our members when speaking to government. We were one of the founding associations of the Tourism Industry Association of Ontario, our industry's main association, and I have the pleasure to serve as treasurer of that association.

We currently represent over 530 tourism operations in Ontario, including attractions, accommodators, destination marketing organizations, and tour operators and associations. All the major provincially run tourism and cultural agencies belong to Attractions Ontario, as do many of the federally run attractions. The Royal Ontario Museum is one of our biggest supporters and I am happy to be here to support them today. The ROM has been a big supporter of our association in the past and I believe it will continue to do so in the future. They are one of Ontario's premier tourist attractions and Ontario's most popular tourism destination.

I am open for your questions.

The Chair (Mrs. Julia Munro): Thank you very much. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you very much, Troy, for being here today. You mentioned in your presentation you represent over 500 groups—

Mr. Troy Young: Five hundred and thirty.

Mr. Lou Rinaldi: —across the province, and that's a mix of private and public sector attractions?

Mr. Troy Young: Yes.

Mr. Lou Rinaldi: Can you elaborate on that a little bit? Obviously, the ROM is a supporter or partner.

Mr. Troy Young: If it's a major tourism attraction in Ontario, it's our member, from Canada's Wonderland, the ROM, the AGO, Ontario Place, the National Gallery of Canada, Fort York, Fort George, Fort Henry, right down to small roadside zoos, like the Elmvale Jungle Zoo up in Elmvale; Scenic Caves up in Collingwood;

Blue Mountain resort. It's a true diversity, and we go right across the province. I've got members in Kenora, Thunder Bay, Ottawa, Windsor, Toronto—probably in your riding as well.

Mr. Lou Rinaldi: So in Attractions Ontario, it's driven by membership fees, I presume, to keep—

Mr. Troy Young: Membership fees and our advertising sales, yes.

Mr. Lou Rinaldi: Specifically to the ROM, then, you mentioned in your presentation that it's a big part, one of your main folks that's part of the association. Can you elaborate on that relationship a little bit more to the fact of—I guess where I'm trying to get is, obviously, you're supporting them with what your organization does, but having them as a partner helps Attractions Ontario be a bigger player—

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Mr. Troy Young: Oh, incredibly so. Our association derives its value by being able to represent the best that Ontario has to offer. Having the ROM as one of our members gives us instant credibility, of course, because the ROM is widely recognized worldwide as a major cultural and educational institution. So by having them as a member, it does benefit us as well, yes.

Mr. Lou Rinaldi: I don't have any further questions at this time, Madam Chair.

The Chair (Mrs. Julia Munro): Any other—yes?

Ms. Leeanna Pendergast: Thank you, Troy. Today's theme has been largely on education and reaching out to youth in the province and, in doing so, engaging families and communities. We heard this morning what an integral role the ROM plays in all of this and how important that is to us as a province. We heard a lot about education tourism. I'm interested in hearing more from you on how Attractions Ontario, in symbiosis with the ROM, strengthens that education tourism in the province, please.

Mr. Troy Young: Well, I'm glad you asked. We do an education field trip planner. We're actually going to print today. I'm surprised I even had time to be here, given that it was going to the printers and we were doing the signoffs this morning. But we do 25,000 copies that are sent directly to each school in the province of Ontario. In a number of cases, we actually have the school boards themselves do the distribution for us.

This field trip planner represents 56 pages of diverse product across the province. Now, the key to get into our guide is that you have to actually be offering curriculum-based programming. This is an opportunity to get in front of teachers so that they have an opportunity to see what's there and what they want to bring their kids to. When we first published it five years ago, we sat down with a focus group made up of teachers and educators to say, "What is it that you need? What information do you require to make this work?" and we've included it. Our guide is structured specifically to their needs.

I'm proud to say the ROM is one of our major advertisers in it. They've got four different programs that they're pushing in our guide this year.

Ms. Leeanna Pendergast: So, Troy, how would somebody access that field trip planner?

Mr. Troy Young: Well, it does get sent directly to each school. We do have a very limited number of copies at our office that we can send out, but we do have it on-line, a PDF copy that they can download from our website.

Ms. Leeanna Pendergast: Excellent. Thank you.

The Chair (Mrs. Julia Munro): Any other questions? Yes, Mr. Arnott.

Mr. Ted Arnott: Thank you, Mr. Young, for your presentation. I'm sorry I missed the start of it, but I'm pleased to report to the members of the committee that our leader, Tim Hudak, gave an outstanding speech at the Economic Club of Canada downtown over lunch. He was well received, and I'm sure that all the members would want to know that.

Mr. Lou Rinaldi: I was waiting for that report.

Mr. Ted Arnott: In terms of the issue we're discussing today, though, we certainly appreciate your advice and your involvement in the issue relating to the ROM and how it's managed.

I do want to ask you about the proposed harmonized sales tax and what your opinion is, what impact you think it's going to have as it relates to your industry if indeed the government proceeds with implementation of the harmonized sales tax next Canada Day.

Mr. Troy Young: While I'm not sure how that applies directly to the ROM, I'll—

Mr. Ted Arnott: I think I can address that.

Mr. Troy Young: Since the question has been asked, I will answer it.

Mr. Ted Arnott: It's an issue that was raised this morning with ROM and they discussed it, so I think it will impact—

Mr. Troy Young: The harmonized sales tax is going to have disastrous effects for our industry. As an association, yes, the different input tax credits that are out there will actually save my association some money, maybe about \$30,000 a year, which is significant. However, I'm worried that my members won't have the revenue to be able to participate in our programs, which means that \$30,000 in one-time savings is going to be easily lost.

Why is that? If people have less money in their pocket, tourism is one of the first things that's going to go. Discretionary spending being what it is, it's going to be difficult. As much as I've seen everything that's been out there about how this is going to be a good thing for jobs and there's going to be an offsetting income tax credit as well, a reduction in income tax usually means people end up saving more, as opposed to spending more. All they're going to see is the cost of the everyday items going up, which is going to have an impact.

I know our industry is very concerned, even more so due to the loss of the extra 3% in room tax availability and the different destination marketing fees that were voluntarily being raised across the province. We're losing about \$45 million in self-generated revenue that's being replaced with \$40 million that now is being spread

out further across the board. We're not quite sure yet how we can rationalize that loss. We're being asked to do more with less. There's a lot of uncertainty.

With the HST, the biggest fear our industry has is that room tax and destination marketing fee loss. I'm not yet sure how it's going to have a positive impact for us, not to say that—when push comes to shove, things will be manageable by us, but at this point in time, when we look forward, knowing the conditions of our industry, the conditions that our industry has been operating under with all the different issues—first SARS, then 9/11, the lack of Americans coming across the border; you have a bad summer and people stay away. With all the issues we've been dealing with over the past number of years, this is just one more obstacle in front of our industry.

Mr. Ted Arnott: Thank you.

The Chair (Mrs. Julia Munro): Thank you, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Young, thanks for the presentation and for being here today.

I apologize. As did my colleague, I missed the first few minutes of your presentation, and you may have spoken to this. The Royal Ontario Museum: What are its impacts on tourism in Ontario? How big a draw is it, in your calculation?

Mr. Troy Young: Well, the Royal Ontario Museum is one of the top six attractions in Toronto, Toronto being the number one draw in Ontario, and Ontario being the number one draw to Canada. Therefore, you have to assume that it's at least in the top 10 of draws to Canada.

You mentioned educational tourism. Another growing sector of the tourism industry is cultural tourism. Cultural tourism tends to attract more wealthy, more educated people, people who will spend more money.

If we are going to have any kind of recovery in tourism, key agencies like the ROM are going to be there.

Now, when we look at the top six attractions in Toronto, they're all owned and operated by one level of government or another. The CN Tower is owned and operated by the federal government. The Toronto Zoo is owned and operated by the city of Toronto. And of course the province owns and operates the ROM, Ontario Place, the Ontario Science Centre and the Art Gallery of Ontario. So our top six attractors for this city are all managed and operated by government.

When you look at great cities around the world, every one of them has a signature museum that goes along with it. Of course, New York has got more museums than we know what to do with, and it will take you a number of visits there to actually see them all. But Chicago, Philadelphia, Denver—Paris has the Louvre, London has the British Museum, Toronto has the ROM. The ROM is integral, both for that cultural tourism aspect and for others—just preserving our own history.

When you look at the world, the 2008 Global Cities Index rated Toronto the 10th city overall in the world. This was broken down into five categories: business activity, human capital, information exchange, cultural

experience, and political engagements. Toronto rated fourth overall in cultural experience, behind only London, Paris and New York. It was 16 spots higher than Chicago, 15 spots higher than Beijing, 19 spots higher than San Francisco, 11 spots higher than Rome. So if we are that important on the international landscape for cultural experiences, and the ROM is arguably our number one cultural attraction in this city, it kind of puts into perspective where the ROM's value is.

Mr. Peter Tabuns: Okay. In the presentation we had this morning from the chair of the board of directors and senior management, they talked about their efforts to reach out to the United States to bring in those tourists who were willing to travel some distance. What do you see as the impact on the ROM of the passport requirements between the United States and Canada? Have you seen evidence of that causing problems so far? Do you expect more problems for attractions like the ROM?

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Mr. Peter Young: I couldn't speak specifically to how it has impacted the ROM, but I know that with a number of my members, it has had a severe negative impact, especially the border communities that rely heavily on that cross-border traffic. Niagara Falls is extremely hurt, as is Windsor. Any attraction that previously depended upon large numbers of American tourists is hurting because of this, because they are staying away.

But there are a number of reasons; it's maybe not just the passport requirements. I mean, we've seen a decline in American tourist numbers for a number of years now. We were hoping that, with the election of a new government in the United States, this would change, but of course, the passport requirements continued as was previously anticipated.

Yes, it is definitely having a negative impact. What we can do to change that, honestly, I'm not sure.

Mr. Peter Tabuns: Okay. One of the things that came up in discussions this morning was setting up a system that would allow people to get into the ROM without charge. What impact would you see that as having on tourism?

Mr. Troy Young: Well, unless your party is willing to assist with a government motion to allow the ROM to be free and to provide them with the operating capital to offset any losses to that, I can't see that it would work.

Most museums around the world have a fee. If you want it to do something that was positive in that way, I would suggest having a certain day of the week where there is a greatly reduced rate. But if you're going to take from the ROM that potential revenue stream of the admissions, then it has to be replaced with something, otherwise they're going to have to cut back on their programs. It's a matter of dollars and cents. From a business perspective, I would say that it would be a poor decision to make. From a political position, I can understand why someone might want to make it, but it does come with a dollar figure.

Now, would it be a worthwhile investment by the province to do that, to give the ROM the money to offset

those lost revenues? Yes, given the amount of money that tourism generates for this province—\$22 billion a year; \$2.6 billion a year in tax revenues directly to the province. Surely there could be a couple of million hidden somewhere that could be used to offset it. I don't know the annual amount of money the ROM takes in in admissions. I'm sure the ROM would be able to answer that question a little bit better than I am. But if you're asking me, "Should we go that route?" Only if the government and the other two opposition parties are willing to support it, yes. Otherwise, it's going to be a minefield and best left alone.

Mr. Peter Tabuns: I have no further questions.

The Chair (Mrs. Julia Munro): Fine. Thank you very much.

Now I'm prepared to entertain a question, even though we've done the rotation. So if you wish to ask Mr. Young a question—

Mr. Rick Johnson: Yes, please. The member opposite asked about the effect of the harmonized sales tax, and you said it could have a negative impact, although you admitted that, for your business in particular, there would be savings.

Just a comment: You're involved in the tourism industry, and Quebec has had this harmonized sales tax for a number of years. Porter Airlines is flying four times a day to Mont Tremblant. It doesn't seem to have had an impact on their tourism. What are they doing differently for their tourism that it hasn't affected them compared to what you were suggesting could happen here?

Mr. Troy Young: The biggest issue with the harmonized sales tax and how it affects Ontario differently than other areas that have had harmonized sales taxes before, or even province-wide destination marketing fees, is the fact that, with the bringing in of the HST, we are losing that tax room. Those voluntary DMFs that were previously raising \$45 million across the province are going away. None of the other places that went with HST or a province-wide DMF had voluntary ones in place first. That's what puts us in a unique position, and that hasn't truly been addressed yet.

If this government is willing to step forward and help us come to some solution so that we can still self-direct those fees without pricing ourselves out of competition with all of the other jurisdictions around Ontario, then we can make it work.

When we did some calculations—and actually, it wasn't just us who did the calculations; it was in the Sorbara report as well—there was \$100 million of potential money there on that 3% cap room, the difference between the previous 5% and now the 8% that we're going to be charged. Well, somewhere along the line, that \$100 million has shrunk to \$40 million. If you can get it back up to \$100 million, we'll go away. We won't talk about HST anymore.

Mr. Rick Johnson: How much embedded savings are there going to be for your members?

Mr. Troy Young: For our members? Probably not a lot.

Mr. Rick Johnson: How do you know?

Mr. Troy Young: We don't, specifically. What we do know is, we're losing that \$45 million in previously generated marketing fees.

Mr. Rick Johnson: But you're saving—every one of your members is going to be saving all the way along the line. Ask any accountant and they'll tell you: You're saving money.

Mr. Troy Young: But it's not just our members that we're worried about. We can collect those input tax credits, but you're correct: It's the consumer that can't.

Mr. Rick Johnson: And then you'll be able to pass those savings along.

Mr. Troy Young: Perhaps. Some people will be able to.

Mr. Rick Johnson: Well, that'll be your decision.

Mr. Troy Young: Exactly. It'll have to be done on a case-by-case—

Mr. Rick Johnson: I would say it's incumbent upon—

Mr. Troy Young: —and I can't get into the individual business decisions by my individual members. Some of them will—

Mr. Rick Johnson: I would say it's going to be incumbent upon your members to pass along any savings that they get.

Mr. Troy Young: Well, some of my members are actually saying that HST will be a good thing for them. The majority of them are saying no.

Mr. Rick Johnson: That's what we're hearing, that the majority are saying yes.

The Chair (Mrs. Julia Munro): All right. Thank you very much. I think that concludes the questions from the members. Thank you very much for being here today.

LEAH SANDALS

The Chair (Mrs. Julia Munro): Is Leah Sandals here? Yes? Thank you. Please come forward. Good afternoon, and welcome to the committee. As you might know, you have 30 minutes. You can make a statement, and then the time remaining will be divided. So if you're ready, you can begin.

Ms. Leah Sandals: Okay. Thanks, everybody, for taking time to listen to me today. I know it's a lot of information that's being thrown at you. I just want to present briefly on one key mandate of the Royal Ontario Museum and its performance on it, and that mandate is to public access. My position is that the Royal Ontario Museum is performing at a substandard level in meeting this mandate.

To review quickly from the board's own policies on the matter, the ROM is "mandated to illustrate and make known to the public the natural and cultural heritage of Ontario, Canada, and the world," and it "views access to its collections ... as one of its primary and defining responsibilities." This is not a tertiary responsibility; it is a primary and defining responsibility.

Access is also promised in the board's policies to "the residents of Ontario, and to people throughout Canada and the world, whenever possible." The mandate continues: "In making its collections and information resources accessible, the ROM will ... minimize economic ... barriers and reach out to a broad range of interest levels, to the greatest extent possible."

Again, it's my position that the board of the Royal Ontario Museum, though performing well in a number of areas, is not meeting this primary and defining mandate of the museum.

Economic barriers to public access are the main barrier to public access I'm interested in at the ROM, and the main economic barrier to public access at the ROM or any other museum is, of course, admission fees, which I know you've already discussed a little bit today. What is the admission fee structure at the ROM? It's already been discussed a bit, but just to highlight it, it's \$22 for adults, \$19 for students and seniors, and \$15 for children aged 4 to 14. In my research—which, I admit, is not at a highly academic level, but in the research I've done, I can say that this is the highest museum admission fee structure in all of Canada and one of the highest museum admission fee structures in the world. What we can infer from this right off the bat is that the ROM is not minimizing economic barriers, as is mandated by its own policies. It is actually raising the economic barrier to the greatest extent possible.

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To be fair, many other museums, as you all know from having visited other cities, have admission fees.

There are certain standard means that museums use internationally, nationally and regionally to overcome economic barriers to public access.

According to the Canadian Museums Association's 2006 ethics guidelines, the one means that they note for fulfilling public service responsibilities and ensuring equality of opportunity for public access to collections is that some museums provide free admission at specific times.

There are very few museum associations that will mandate that free admission is required for specific times in order to continue being a museum. The reason I mention this practice of having free admission at specific times is because it's the most common practice for initiating public access mandates, or for enacting them.

Under item 3, I listed a variety of public access techniques that are in common usage at other museums. Again, the first one is free admission for one evening, which is three to four hours a week. This is the most common means of meeting public access commitments. It means there are guaranteed regular times when the museum collection is available to all regional residents, national residents and international visitors. Some institutions even have two free evenings per week, like the Art Institute of Chicago does in the summer. It's worth noting that free evenings are often funded by corporate or foundation sponsorships, not solely by government or by the museums.

Another option that many museums use to overcome economic barriers to collection access is family package admission fee options. This is a popular means of making museum-going more accessible to family groups. As somebody noted here this morning, to take a family of four to the ROM costs \$74 in one shot. But at many other museums, including the Vancouver Art Gallery, the National Gallery of Canada, the Canadian Museum of Civilization, the Canadian War Museum, the McCord Museum of Canadian History, the Australian Museum, the Art Gallery of Ontario, they usually set family price admission at—let's say it would be \$50 at the ROM instead of \$75, or even \$40.

I do have an appendix in here that lists details of the research I did and provides lists of the admission fee structures at all these museums that I've mentioned.

Another popular public access initiative is free admission for school-age children. This is practiced at the Montreal Museum of Contemporary Art; the Guggenheim Museum; the Museum of Modern Art, which is actually free for those under 16, not just for those under 12; the Louvre, which is free for those under 18; the Art Institute of Chicago, which is free for those under 14; and the New Museum in New York, which is free for those under 18. Again, my research isn't comprehensive, but it's a common-enough practice. Just to remind you, at the ROM it's only free for children under the age of four.

I'll just continue with one more of the common-practice access techniques that museums use, which is to have a ticket price that is around \$12 or less for general admission. I don't know how they decide upon this. To my mind, they're indexing it maybe to what movie tickets cost. The National Gallery of Canada, the Canadian Museum of Civilization, the Canadian War Museum, the Manitoba Museum, the Canadian Centre for Architecture, the Royal Tyrrell Museum, the Vancouver Maritime Museum, the Dallas art museum—all of them also implement the size of their free evenings or other access initiatives. They also have general admission pricing that is around \$12 or less.

There are other wonderful museums that have free or by-donation admission for all viewers, all the time, but I feel like that's a super long shot in this case so I'll just leave it for you to read about later.

The ROM's strategies for overcoming economic barriers to public access do exist. The ROM discussed some of them this morning. They're all involving partnerships with wonderful and highly responsible organizations like the United Way and the Toronto Public Library. However, the programs that the ROM has do not collectively or individually meet standard or common museum access practices. I can briefly go over why.

The museum and arts pass program that's in place at 32 Toronto public libraries is only available to Toronto residents and not to any other Ontario residents. The MAP program was expanded to all Toronto Public Library branches earlier this year, but the Royal Ontario Museum did not expand its participation to all Toronto Public Library branches, limiting it only to 32 branches

in high-priority areas. The majority of the museums involved in the MAP program did expand their participation to all branches of the library, but the Royal Ontario Museum did not, along with a minority of other museums.

The ROM does have one hour of free access on Wednesdays from 4:30 p.m. to 5:30 p.m., but one issue with access here is that it's during the workday for most Torontonians and Ontarians. Another issue is that in all my research, I could not locate a single other museum that only offers one hour of free access per week as their free access requirement. Two seems to be the absolute minimum, ranging up to four or five hours per week. Even the program of providing passes to the United Way, which, of course, is a wonderful organization, only distributes 500 passes per month through Toronto and does not in any way make a dent; it's less than 1%—even if they were used to their maximum extent, they would reach less than 1% of the 1.7 million people in Ontario who are living in poverty, not even mentioning the middle class and lower-middle class people who might have difficulty accessing the ROM in its current fee structure.

The half-price admission on Friday evenings is one of the ROM's most promoted public access initiatives, but given that its existing admission price is \$22, half price is \$11, which actually just brings it in line with what the standard practice admission fee is at many international, regional and national museums.

The ROM also occasionally puts coupons in the newspaper and makes an announcement that children are free when accompanied by a paying adult for a limited time. Unfortunately, these promotions are very inconsistent and do not meet any kind of reliable public access mandate.

Overall, the ROM performs particularly poorly on access when compared with other museums because it possesses the unusual combination of extremely high admission prices for all people over the age of three, nearly zero free admission hours, no family-package ticket pricing, and the access programs that it does initiate are focused mainly on Toronto and also consist of the release of relatively small numbers of free tickets to non-profit agencies, only enough to cover less than 1% of Ontario's poor at maximum usage.

It's my position that improving economic access at the ROM is both necessary and financially feasible. According to a 2007 report published by the American Association of Museums, "Despite the challenging aspects of free admission days, it is reasonable to conclude that they are vital to a museum's accessibility." In other words, many museums find it very painful to offer free admission hours in the range of three to four hours per week or to initiate other free-hours initiatives. It's painful for all museums, but it's also the job of all museums, in their mandates, to provide public access while maintaining their collections.

I've done a little bit of number-crunching in these notes to the effect that four hours of free admission at the

ROM, given its current 56.5-hour week, could only involve sacrificing 0.5% to 0.8% of total revenues. This translates, according to 10-year revenue averages, into a revenue loss of roughly \$300,000 to \$500,000 per year.

Again, there are many ways that museums worldwide deal with this intrinsic challenge that museums have of providing free hours, whether three or four a week, or for an entire week or an entire month, while being financially solvent. That includes corporate sponsorships. Free evenings at the Vancouver Art Gallery are sponsored by Sun Life Financial, while free evenings at the Museum of Modern Art are sponsored by Target. Target also sponsors free youth admission at the New Museum. There are other examples that could be brought up.

Foundation sponsorships include: Free Wednesday evenings at the Art Gallery of Ontario are sponsored by the Catherine and Maxwell Meighen Foundation, while free daily admission at the Museum of Contemporary Canadian Art is sponsored by the Hal Jackman Foundation.

Many other museums also use a combination of corporate and foundation and endowment funds. The Cincinnati Art Museum has free admission every day, sponsored by a variety of foundations and endowments, and the Baltimore Museum of Art has a similar structure, drawing on many different sources of funds to provide completely free admission to the public.

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Government supports and strictures are also an option, though not the only one. Of course, you may know that in London, UK, the national government decided to make five or six museums free, which boosted attendance by 80%. In some museums, of course, that costs a lot of money. But governments can also implement legislation. The Metropolitan Museum of Art and the Museum of Natural History in New York are legally required by their leases to be open free five days a week and two nights a week.

So, in conclusion—sorry to throw all this stuff at you guys; it's a lot to take in—I would recommend that in order to bring its performance on economic access up to a satisfactory level, just a satisfactory common practice level, the ROM should reinstitute one free evening per week, which it had in place as recently as 2002. I also suggest that it reduce regular admission fees to be in line with movie ticket pricing and also that it institute family ticket pricing.

While the board and the management may find it a challenge to implement these access suggestions, I'll just reiterate that this challenge is part of the package when it comes to running a reputable and respectable museum.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin with Mr. Arnott.

Mr. Ted Arnott: Thank you very much for your presentation here this afternoon. You've done a very thorough job of researching the point that you've made and you've given us many examples of museums around the world that make an effort to ensure that there is no economic barrier to access to their exhibits.

I suppose that in a perfect world we would hope that all museums would be free to access and enter. Unfortunately, we are in a time of severe economic constraint, probably for the next two years, on the part of governments at all levels in Canada, and it makes it all the more difficult to contemplate what you're suggesting, I would assume, because of course if the ROM were to lose the revenue that's associated with the admissions, it would have to be made up somehow, as Troy Young was saying.

Ms. Leah Sandals: Can I clarify that my suggestion is not to make admission free daily at the ROM; it's only to—

Mr. Ted Arnott: No, I understand that. I heard your conclusion and I understand. But I think there would have to be an economic analysis of what this would cost, first and foremost. I know that the ROM staff are here and they've heard everything you've said, and I'm sure they're very interested in working with you on it to see what possibly can be done. Obviously you are here because you support the ROM and you believe—

Ms. Leah Sandals: Yes, I want people to have access because it's so wonderful.

Mr. Ted Arnott: You want more people to have that opportunity even if they don't have the money to come in the doors. That's commendable. Thank you very much for your presentation.

The Chair (Mrs. Julia Munro): Mr. Tabuns.

Mr. Peter Tabuns: I'd like to thank you as well for the presentation and taking the time to come here today and speak with us.

Have you discussed this proposal with the ROM itself?

Ms. Leah Sandals: I'm a member of the media. My profession is cultural criticism and editing. My job is to point out when either an artist or a gallery or a curator or a museum is claiming to do one thing and is not delivering on it. That's what I see my role as being.

If I was in more of a consultancy role or a non-profit organizational role that was leading on arts accessing in Ontario, I would love to work with the ROM on this. But that's why I've taken the tack that I have.

Mr. Peter Tabuns: Okay. So you haven't had discussions with them at this point. You've presented this to us.

Ms. Leah Sandals: I presented to you; I've written articles about it as well that have appeared in the *Toronto Star* and *Now*.

Mr. Peter Tabuns: Okay. You did a calculation of what it would cost, essentially, to have one free night per week, if I remember, as I—

Ms. Leah Sandals: It's a calculation. I'm sure there are many other calculations people could make.

Mr. Peter Tabuns: Have you had a chance to discuss this with others who are familiar with doing those calculations to see if there are weaknesses or particular strengths in yours?

Ms. Leah Sandals: No, unfortunately. Again, I do not have a consultancy background or an academic back-

ground. The study I'm presenting is purely from a layperson's perspective.

Mr. Peter Tabuns: Right. And you noted that in the UK, where they've brought in free admission, attendance at museums where there was free admission had gone up by 80%. How did that lack of revenue get dealt with by the governments?

Ms. Leah Sandals: Well, again, I don't expect that to happen here because the government made a commitment to making admission free at those museums to the tune of hundreds of millions of pounds, probably even billions; I don't know. But I do urge people to look through this package because there are many other options. Some museums have free admission to the permanent collection only while charging ticketed prices to special and temporary exhibitions. That's another solution that's also in common practice that I haven't calculated cost for, but it could be affordable.

Mr. Peter Tabuns: Okay. I should say I'm very sympathetic to the argument you're making. As a kid, we came in from Hamilton and went to the museum, and at these prices my family would never have gone to the museum. It just wouldn't have happened.

Ms. Leah Sandals: You also wouldn't have had access to free tickets unless you were involved with the United Way at that point, in this hypothetical situation. Your family wouldn't have had access to the passes available through the Toronto Public Library, nor, assuming you're a Canadian citizen, through the cultural access pass program.

Mr. Peter Tabuns: No, that's quite correct. When I was a kid I thought it was an extraordinary treasure house, and the thought that other kids aren't getting a chance to get in there now is a distressing one.

I don't think I have more questions, but I do want to say that I appreciate the analysis and the fact that you've taken time to advocate for this position, because I think people should have access to the common property of the public and this is part of our common property.

Ms. Leah Sandals: Thanks. I think an important point for me is not that this is just my wish, but that it's actually mandated by the museum's own policies, just as it's mandated in the policies of almost every museum in the world. That's what makes a museum a charitable organization, to provide public access to the collection as well as to take good care of it.

Mr. Peter Tabuns: I think it's a fair point. Thank you.

The Chair (Mrs. Julia Munro): Thank you very much. Ms. Pendergast.

Ms. Leeanna Pendergast: Thank you, Leah. This is quite an impressive presentation, and you've done your research. As a teacher, I'm trying to go through the document as thoroughly as I can, but there's a lot in here.

I have a very simple question. Looking at sections 4(a) to (g), you go through the ROM's strategies for overcoming economic barriers. And we heard a lot of good stuff as well; there's a lot of good stuff you have here in the document this morning: the ROM CAN program, providing free admission to the tune of over \$50,000;

tickets to the United Way, which you mentioned; bursary funds for school-age children, which is of course important to educators; free admission at specific times. You mentioned the hour and the ROM mentioned this morning that they did have to extend that time as well. They did mention the virtual capacity, the two-way classrooms, which is reaching out in another way. We're not talking admission fee; it's a whole new concept in the 21st century.

I'm looking at section 6, "Conclusion," and you do make three recommendations for common practice measures. I guess, looking at those, in a perfect world there would be lots of money to make all of this happen. In the world that we live in now, with economic constraints and a global economy that's struggling, I guess I really want to just get your input. If there was some sponsorship money or government money that did become available, what kind of incremental applications would you see in a prioritizing method? The ROM has made a clear commitment to minimizing economic barriers, but how would you prioritize that in a hierarchical way? And in doing so, could you also consider what other implications there would be, then, in reducing those costs?

Ms. Leah Sandals: Well, I would prioritize it in the way that I've outlined here. Priority A would be to bring in or expand free hours from one to at least three or four. That is the minimum. Then the others, I would hope, would come after that in priority. There is an article in the appendix here from the American Association of Museums that discusses these kinds of issues, like how museums grapple with it, because if they have more attendees, then sometimes costs for security go up or costs for maintenance. So those things do need to be balanced. I can recognize that.

But one thing that's very interesting is that the entire world is being affected by this economic slowdown right now, and yet we do not see admission prices or admission restrictions at other museums that are dealing with similar factors to the extent that we see them at the Royal Ontario Museum. The main question that occurs to me is, how come other museums can do it but not the Royal Ontario Museum, with all its ingenuity, connections and resources that already helped it raise \$272 million for a new building? I know it's much harder to raise that amount, and I wouldn't expect that amount to be raised for admissions, but it obviously has many resources at its disposal, and other museums have demonstrated that even in times of economic hardship, solutions can be found.

So I would actually suggest that the ROM or some other consultants or the government talk to those museums that have these standard free admission policies, or even better, and ask them how they make it possible. There must be some way and it's probably different for each museum, but maybe they can learn from each other.

Ms. Leeanna Pendergast: Thank you. When you say how other museums do it, what is the "it" that you refer to?

Ms. Leah Sandals: Well, that they overcome economic—that they make free admission possible; that they

overcome economic barriers in other ways; that they manage to keep their admission fees largely below \$15 and otherwise below \$20. I'm serious when I say that \$22 is one of the highest adult admission fees internationally for museums. So perhaps consulting with those other museums could be of benefit to the ROM. That's what I would suggest.

Ms. Leeanna Pendergast: Okay. You're clearly a supporter of the ROM and acknowledge that they are doing great things, and you're suggesting that your input would help them move even further forward.

Ms. Leah Sandals: Yes. The whole point of having access is because the collections in museums are so wonderful and so educational for people of all ages.

Ms. Leeanna Pendergast: Thank you.

The Chair (Mrs. Julia Munro): Thank you. Further questions? Okay. Since I indulged your side with an extra question, we'll do the same here. Ms. MacLeod.

Ms. Lisa MacLeod: Thanks so much, Madam Chair. I appreciate the opportunity to ask you one very quick question, Leah. Again, I think all of the members of the committee have recognized your desire to show the ROM to the world.

As you know, a year from now, ticket prices at the ROM will go up by 8% as a result of the harmonized sales tax being brought in by Dalton McGuinty's Liberal government. I'm wondering what you think the impediment to ticket purchase prices will be as a result of that new 8% tax hike.

Ms. Leah Sandals: Well, I've already made it clear that my position is that the admission fee structure at the ROM, with its extremely high admission fees for anybody over the age of four, is already restrictive. So 8% more is just going to make them even more restrictive. I already believe that they severely curtail who can economically access the museum, and I've hopefully made my position that the access programs that it has do not overcome the barrier it has set for itself for access.

Ms. Lisa MacLeod: Just a quick supplementary, Leah: Do you think that people attending the ROM, the number of people going to the ROM, will decrease as a result of this 8% tax hike on the ticket price? Do you think it will stay the same, that the same amount of people will attend, or will it decrease?

Ms. Leah Sandals: I can't say. I think already the attendance numbers, as I mentioned, are curtailed due to the \$15 to \$22 admission fees that are in place. So it could possibly reduce attendance, but the ROM has already reduced attendance for itself by setting its admission fees so high.

The Chair (Mrs. Julia Munro): Okay, thank you very much. We certainly appreciate you coming here and giving a very thoughtful presentation.

Ms. Leah Sandals: Thank you very much for your time, everybody.

TOURISM TORONTO

The Chair (Mrs. Julia Munro): I'd now like to call on Joel Peters, senior vice-president and chief marketing

officer of Tourism Toronto. Good afternoon, and welcome to the committee. As you may know, you have 30 minutes, during which time you can make a presentation and we will entertain questions from the members. So, whenever you're ready.

Mr. Joel Peters: Thank you, Madam Chair. Welcome and good afternoon to members of the committee. It's a privilege to address you today. In my role as chief marketing officer for Tourism Toronto, I'm most often presenting in other cities and in other countries, where I get a chance to really push what Toronto is all about and how surprising our offerings are in culture, entertainment, sports and across the board. So it is very much a unique thing for me to be able to do.

I thought I should begin with a few words about Tourism Toronto. Our organization is privately funded. We're an industry association. We have approximately 1,300 members, and we're the official marketing organization for Toronto. We operate in partnership with the city of Toronto, the city of Mississauga and the regional municipality of York, as well as others, to promote overnight travel to the GTA. We have numerous partnerships and relationships with the Ontario Tourism Marketing Partnership Corp. and with the Canadian Tourism Commission, all of whom sort of form the array of destination marketing organizations responsible for promoting the country.

I'm honoured to address you today on the topic of the Royal Ontario Museum. The subject of my remarks will be how the ROM contributes to our success as a city and as a tourist destination. I guess I should declare upfront that I was very fortunate; I served for six and a half years as VP of marketing at the ROM prior to the last three and a half years in my role at Tourism Toronto, so I do have some history with the organization.

There are three major factors that I would lead with in terms of my assessment of the ROM's importance and its contribution to where we're at as a tourism destination. With your permission, I'll try and use a few stories just to illustrate how important those things are. The first is their curatorial excellence, second is their architectural significance, and the third is the depth of their collections and the stories that those collections and artifacts represent.

The curatorial excellence may seem like an odd place for a marketer to start, but I'll illustrate my point with a story. It may be a bit of an apocryphal story, but back in the early 1990s at an international gathering of Egyptologists, we're told that in the discussion at the symposium when it turned to the subject of what might be the next great exhibit on Egypt and Egyptian artifacts, it led to a great discussion. Someone pointed out that there had never truly been an exhibition of artifacts from the old kingdom, the first great flurry of building of the pyramids in Egypt. As the conversation went on, the curators involved drew up a list of artifacts: "If we had a wish list of all the things that we could display to the public, what would be on that list?"

The ROM was very much in that conversation. As a result of Krzysztof Grzymalski—Kris Grzymalski is a senior

Egyptologist, at the ROM for over 20 years. He was included in the discussion, and the exhibit that was formed included partnerships with the Louvre in Paris, the Metropolitan Museum of Art in New York, and the ROM—three institutions only. That exhibit came to the ROM because of his stature as a curator. He started as a young Ph.D. student when he came to the ROM in the 1980s. By the time of this symposium, he was their senior curator, and with his depth of scholarship and research and the publications that he has done on Egypt, he was very much a natural part of that discussion.

It led to a very fine collection of artifacts that came to the ROM in February 2000, and over the next 100 days more than 455,000 people came to see that exhibition. So when you get to curators, when they have the background, the training and the support of their institutions, they're really the backbone of a successful museum. I can tell you from my six and a half years working there that the ROM has a very impressive lineup of curators and they command a great deal of respect in many, many diverse fields.

When you look at exhibits today like the presentation of the Dead Sea scrolls, these aren't exhibitions that you can rent. It's your reputation that brings you to the table and it's just scholarship that gives you the card to play to talk with people about lending precious artifacts between institutions. It's the relationships of those people one to the other that leads to the success. It's quite a great factor.

The second factor that is important to success internationally is the architectural significance to their public meetings. Love it or hate it, the ROM has been brilliantly expanded through the efforts of the Renaissance ROM campaign. I think we owe a great deal to the generous funding that was provided to launch the cultural renaissance in Toronto.

With the selection of Daniel Libeskind as the ROM's principal designer, we were blessed with an individual who more than perhaps any other living architect is able to capture the public imagination and translate the stories and the aspirations of the public into a building. He did that with the Jewish Museum in Berlin. It's an incredible monument to the Holocaust and it's an incredible experience to visit it. It really shakes you to your core. He also did it when he was selected for the master plan of the World Trade Center. He was the only architect who submitted to the World Trade Center competition that the actual families of the victims endorsed as their preference for what should happen on that site.

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When I make presentations to introduce potential meeting planners, tourism partners or the media, whether that's in Europe or South America, the United States, Asia or elsewhere in Canada, there are really two architects who are known to most of the people in the audience. One of those is Frank Gehry and the other is Daniel Libeskind: Frank Gehry by virtue of Bilbao in Spain and his work for the Disney performing arts centre in Los Angeles, and Daniel Libeskind for the two

projects that I've mentioned. When people hear that there's been a public and a private investment in cultural facilities across the city of Toronto that totals \$1 billion over the last seven or eight years, you start to get their interest, but you really don't get their full attention until they've heard that the architects include Daniel Libeskind and Frank Gehry. I've had the opportunity to make those kinds of presentations several times, and it's that piece, it's that human factor again, that just pushes it that much further along as to why the buildings are so important.

It wasn't just a commission for Daniel; he's married to Nina Lewis, a Canadian with deep roots in this country. His children were born here. He lectured at the University of Toronto. So when he talks about his projects worldwide, again, the ROM is part of the projects he's especially proud of.

With the completion of the project, I think one really fully appreciates with Libeskind that he's translated the mandate of the museum into its physical plan. I'm very much a fan—really, the essence of the museum is recorded in stone on those steps on Queen's Park Circle. When you read, "The Record of Nature Through Countless Ages, The Arts of Man Through All The Years," it's just such poetry. And now that they've done the expansion, the entire second floor is a very coherent story of life on earth, right from the rocks that were here in Precambrian times through biodiversity now. When you move to the third floor, there's the exploration of world cultures, and there are those wonderful galleries of Canadian history on the first floor as well. Those themes of natural history and world culture have come to life in a way that they just weren't doing for us in the 1980s and the 1990s, and it's really been a brilliant addition.

That brings me to my third factor, and that's the importance of the ROM's collections. Again, I'll do it by virtue of a story. One of my favourite artifacts in the ROM is Sitting Bull's headdress. When you talk to Americans in particular who remember Custer's last stand and Little Bighorn, and you're talking to them about what kinds of things they can find in the museums and the galleries in Toronto, you mention Sitting Bull and it kind of gets their attention pretty quickly. "Why is that at the ROM?" It turns out that after his battle with Custer, he gathered his fellow native population and they looked at their situation. The Dakotas were being flooded with gold-diggers. They were being pressured on all sides. They went up into Canada, and in that self-imposed exile where he led his people into Canada and spent several years, he grew to really respect the civility of the country and the respect that he was treated with by the Northwest Mounted Police. When he returned, again volutarily, to the United States, he presented his headdress to the colonel who was in charge of the Northwest Mounted Police at that time.

It's one of many stories, but when you look at these artifacts, they're brilliantly conserved. It's great to have these pieces still be part of our heritage, but they are there for a reason, and they are there because of interactions between people. The ROM has found a way to bring that to life.

I can go on: Paul Kane's sketches, his portraits of life in western Canada. He was a Toronto resident, he lived on Wellesley Street, and on three or four occasions he ventured off into the Northwest Territories—the Northwest Territories at that time, which were Manitoba, Saskatchewan, Alberta, all the way to the west coast of Canada—sketched things, came back and worked in a studio, and thanks to a former mayor of Toronto, William Allan, that collection passed to the ROM. Again, it's out on display. It's something that they can share with people.

The outstanding gems and minerals collection: If we didn't have all of these Canadian mining corporations that are headquartered here in Toronto and their importance in the world finance side of the mining industry—their mines would send them these great specimens, and a relationship developed with the ROM. That was the basis for their gems and mineralogy collection. Again, it's a world-leading collection thanks to the people of this province who have made those contributions.

So those three factors I think are the cornerstones on which we as an organization are able to promote the ROM and the way in which we tell Toronto's story to potential visitors. I've put together, with the help of ROM staff, some of the ways in which we handle promotions for the city as a destination. You'll see our Toronto Magazine there, the first two issues of it. It's a new venture that we undertook in 2008. The ROM was a natural for the cover, and I've always loved this photograph: It's a young woman, just her exuberance for being in that Michael Lee-Chin Crystal, dancing. I think she captures what a lot of us feel when you're looking at this building in terms of what it inspires.

There are some articles in there that we've had in terms of international media attention and there are a couple of examples, again, of advertisements that we've placed into the United States and into Europe and other markets too. You'll see again that the ROM figures quite importantly in those positions. It's a way to get people's attention and talk about this great city of Toronto which, for many of them, would just be another midwestern North American city. It's our cultural institutions, it's our entertainment offerings, it's the fabric of this city that really starts to make a difference.

I'd like to also move on to talk about the role we've seen the ROM take in the last several years, working with the major events that grace our season of festivals.

Luminato, June 1, 2007: Here's a new festival that aspires to be a world-leading cultural festival. It works with the ROM, and the opening day of Luminato was the opening day of the ROM. It's well captured in terms of imagery and street closings etc.—really a great way to launch that Luminato festival.

The Contact Photography Festival: This is the world's largest public festival devoted to photography. In the past year in working with the ROM, there's a series of photographs, fairly disturbing photographs, actually, of homeless people that were placed in the public areas in and around the museum and in the public galleries. Contact is an unusual festival; you kind of encounter it. It's not one that has a great gatherance at Dundas Square,

but it's a great celebration of the image and what it can do and how it can move people, and it was great to see the ROM participate there.

In Pride in 2008, the ROM made arrangements for the world-renowned AIDS sculpture. It's just the four letters, AIDS, in a perfect cube, that are in red. That was displayed at the corner of Avenue Road and Bloor, and it was hugely symbolic for that corner and all of Canada to have that AIDS sculpture there for that period of time.

TIFF: The Toronto International Film Festival is just under way today for its 2009 version. The ROM used their buildings in a very innovative way in 2008. When you drove along Bloor Street after sundown, the images of the Darfur famine were projected onto the exterior of the building. Here's a building that's brought to life: It just is animated by their commitment to working with these festivals and doing things that are unusual and will provoke some thought in people.

Caribana: For the last two years, exhibits related to the West Indies and their cultural traditions have been especially developed during the festival.

With Nuit Blanche, the ROM has opened their doors. When a million residents and visitors take to the streets for an annual all-night arts thing—again, when we talk to people in other areas and other communities and they hear that a million residents, combined with visitors, can safely enjoy their city and be welcomed into their cultural institutions for a great celebration, it really makes a difference when we're talking about Toronto. This is an institution that's transformed itself into a vibrant force in our city's life and in our provincial culture, and I think that we're better for it.

Just a few facts: They're a long-standing member of Tourism Toronto. They're a member and participate in our Tourism Toronto Attractions Council. There's an alliance of G7 attractions; the ROM participates well. There's CityPass, which is a program that offers half-price admissions to visitors, and it's marketed through 10 US cities. Toronto is the only city that has it and the ROM is a participant. About 60,000 people buy a CityPass and visit up to six cultural institutions during their weeklong visits.

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We have a media alliance; again, the ROM is active in that. Over the course of 2009, our media relations team will host probably about 460 to 470 foreign journalists this year. Not all of them will visit the ROM, but the compelling images of the ROM that are part of our Toronto story, the role they play—they really help them take another look at Toronto, looking at it differently today than they would 10 or 15 years ago. It's an important part, as an institution, of how we surprise visitors and how we can continue to play a leading role in inspiring visitors to consider a first visit or a return visit to our city.

Madam Chair, I'd be pleased to answer any questions that you or your members would have today.

The Chair (Mrs. Julia Munro): Thank you very much. We'll begin with Mr. Tabuns.

Mr. Peter Tabuns: Mr. Peters, thanks for the presentation. You made very clear the role of the ROM, both in terms of its collection and its physical presence, its importance to tourism in this city. Do you have recommendations for this committee or for the government of this province as to any policy changes or directions we could take to enhance the ROM or protect it in the long run?

Mr. Joel Peters: I can't say that I came prepared today to do that. I mean, we continue to expect it to remain well funded and a vibrant part of the community.

The kind of risks that the ROM will take with its major exhibitions, the visiting exhibitions—these are often \$2-million to \$3-million risks. The ways in which that risk can be supported—it brings the world to the people of Ontario, but it also allows us to do some very unique things on promotions. So that's certainly an area where I'd love to see the support of the institution continue and be strengthened.

Mr. Peter Tabuns: Okay, thank you. I don't have any further questions.

The Chair (Mrs. Julia Munro): Ms. Albanese?

Mrs. Laura Albanese: Thank you for your presentation. You were just mentioning the risk factor in some of the blockbuster exhibitions that the ROM has been able to offer, like, let's say, the Dead Sea scrolls. How do you use those in your marketing? How do they benefit Tourism Toronto in stimulating cultural tourism for our city?

Mr. Joel Peters: That's a great question; thank you. When you visit our website today—seatorontonow.com—the Dead Sea scrolls is very prominently on the home page. We use it in newsletters. We use it in the campaigns we conducted this summer in terms of making people aware that it was on, whether that's throughout Ontario, to residents of the province or going further afield.

Again, the uniqueness of the exhibit really helps because it is only at the ROM. It is one of those where the people who have an interest in that subject matter, of all faiths, will look at how the ROM has put this on. We do an awful lot of online advertising.

Again, the fact that it is with us is something that becomes integral to our content as we tell the Toronto story. We haven't, in the case of the Dead Sea scrolls, done a specific campaign focusing just on the Dead Sea scrolls, but it has been integrated with the other things that we have done, and particularly as well with the media stories that we have been developing and promoting.

Mrs. Laura Albanese: I believe one of my colleagues has a question, Madam Chair.

The Chair (Mrs. Julia Munro): Yes. Mr. Johnson?

Mr. Rick Johnson: The use of the ROM in this promotional material is tremendous, and I notice your expertise is in marketing. As you're moving forward on marketing Toronto and the ROM, what are the plans, given the downturn in the economy, on the marketing side for this?

Mr. Joel Peters: Actually, I guess between last week and into next week, we're in a series of our business plan considerations and presentations to our board and to our various committees. It's very much on our minds as we look at 2010.

It's certainly one of the areas in which we've pulled back this year, because the US travellers, the US consumers—from their pension investments sinking in value to their home situations to their credit issues—really drew back. But we think next year is the year that we need to be back in front of the US consumer.

We're also talking very actively with Ontario Tourism. We do a great many efforts within Ontario. Interestingly enough, we haven't done a lot of promotions into Quebec and Montreal. We see, roughly, 525,000 overnight visitors from Montreal and about 675,000 from the province, and we're looking at how we can increase that number. It's probably the closest urban area that we haven't actively marketed in. It's a very tricky market for Ontario and Toronto to go into because of those rivalries between Toronto and Montreal, but we think next year is the year to take that on.

We've kept our commitments in place through our leisure trade department, which does international marketing, so that we're still active in the UK. Despite the economic downturn, there are segments of the population that continue to travel and they look at Toronto as a great city break, despite the six to seven hours. I think as long as air costs don't go off on us, we can continue to look to that market.

With respect to South America, we've opened up some new relationships in Buenos Aires and in Sao Paulo. Brazil, in particular, has an incredibly vibrant economy, and it's one, because we're in the same time zone, we think we can have some successes with it.

I guess with Asia, we're waiting—Canada does not yet have approved destination status with respect to China. It's a bilateral agreement that they've struck with more than 100 countries, but due to the diplomatic issues between the countries, it hasn't come up yet. We're hoping that Prime Minister Harper's visit this fall puts that back on track. With it in place, we could actively market in China; without it, we can work with them on incentive travel and we can work with their media, but we can't actually enter into partnerships with Chinese travel agencies and airlines that will promote travel.

We're cautiously optimistic. Again, the US, this last year, got passport regulations in place, but they've been buying up passports and applying for them at a pretty strong rate, a very good clip. I think when they started they were at less than 20%; they're somewhere around 25% now in terms of passport ownership. The people we're talking to as potential travellers who are an hour to two hours' flight distance from Toronto, they're travelling on business, they're going abroad on business—they own passports. The question is, does their entire family have passports? And so, the deepening of that will help a great deal.

Mr. Rick Johnson: I guess the impact of the dollar being high right now too will have an impact on that.

Mr. Joel Peters: With the US traveller, you're talking to high-value customers who—and I don't mean to sound callous by this—still have their jobs. The people who are travelling are still employed and they're still earning. So one of the ways we're looking at it is, we may pick up some travel from people that might have been bound for Asia or Europe but are still wanting an international experience, and we're close by. So there are a few bright lights and promises there, but it's measured.

Mr. Rick Johnson: Slight increases wouldn't have that much of an impact, then? Okay, thank you.

The Chair (Mrs. Julia Munro): Thank you. Ms. MacLeod.

Ms. Lisa MacLeod: Thanks so much, Mr. Peters, for coming today. I found your presentation fascinating. I also want to, again, commend the ROM, because this is going to be our last chance to publicly do that. What a great day it was to find out more about the Royal Ontario Museum and how it benefits not only the city of Toronto but our entire province and country.

I don't need to tell you that we've had tough economic times in the past year and a half. The tourism industry has suffered, and I know that if it's suffering in the national capital, it must be suffering elsewhere in this great nation, and this city would be no different.

On top of that, while we're looking at economic recovery, we're facing a massive tax hike on attractions—an 8% increase. I know the tourism industry has grave concerns about how that's going to impact them—in northern Ontario, in eastern Ontario, and right across the province. I'm wondering, because of the fact that there will be an 8% ticket increase at the ROM and other attractions throughout this city, has Tourism Toronto started planning for that eventual tax hike?

Mr. Joel Peters: It's a difficult question for me to answer. From the point of view of planning, we're expecting it, and in discussions with our members the realization is it's across the board.

For many people who have decided to stay closer to home, it's something they're going to encounter on any trip that they take, so I'm not sure that we can single out Toronto or Ottawa or northern Ontario as being more impacted than other places. I'm not certain I'm the expert on this, but one has to look at other jurisdictions and just do the comparison, and our customers will do that. It's not an exercise we've undertaken at this point in time.

Ms. Lisa MacLeod: It's interesting because Ms. Sandals, who spoke just before you, indicated that right now, access for some Ontarians is a challenge, and I think the ROM understood that, with their million-dollar program to get out to schools, the United Way and libraries across the province.

When you're looking at access to probably one of the greatest jewels in this province—with a tax increase from \$74 to close to \$80 per family to travel into the city for a ticket price for a family of four, you have to wonder if it's good policy.

Right now you're speaking to the people who are going to write a report to the Minister of Culture. We're going to be able to make a recommendation in the Legis-

lature to her on fee structures and funding and things like that. Would you recommend that cultural events and cultural places be exempt from the HST so that we can preserve the lower costs, so people can go to our cultural centres across the province without facing a tax hike?

Mr. Joel Peters: It's a difficult question for me to answer. I guess the challenge we have is that in representing organizations that are involved in sports and entertainment, right across the gamut of entertainment, for us to single out culture as being more important than any of the others—

Ms. Lisa MacLeod: Yes, we found out yesterday that hockey is even going to be increased by 8%, making it more difficult for kids across the province to play hockey.

Mr. Joel Peters: Again, my sense is that I would leave it to the ROM to balance out the ways in which—as you say, they've done some smart things already to provide targeted access to various groups. But on an issue of tax policy, I think I'll beg to—

Ms. Lisa MacLeod: Just in general terms, then, and out of pure curiosity, with Tourism Toronto—you've done a remarkable job, and you did a great job here today—wouldn't that be something your own organization would be thinking about?

Mr. Joel Peters: We've had members raise it. Certainly, there are concerns. I think the thing we come back to, in terms of any discussions we've had, is that it is going to be universally applied, so people are going to be dealing with it, whether it's at a Tim's counter buying doughnuts, or on any expenditure. So I wouldn't want to sit here today and say that the panacea to it is to just target the cultural—

Ms. Lisa MacLeod: Say you don't just target the cultural thing, but people coming in—and I'm only talking about Tourism Toronto, because I have some curiosity about this. People will be paying a little bit more to come to Toronto, with their gas, and a little bit more in their Internet access fees to search out different things on your website. Do you think it's going to have an impact at all, notwithstanding the cultural aspect, for the whole tourism sector?

Mr. Joel Peters: I think you're going to see our industry respond in creative ways, with packaging, where rates are blended, so that hotels with attractions, with other activities, in terms of one fee—there has been a tremendous level of value promises that have been put into pricing that has come into effect this last year. People are already responding. So I think you're going to continue to see that kind of creativity. But I wouldn't go across the board on things.

Ms. Lisa MacLeod: Thanks so much. I appreciate your attendance here today.

The Chair (Mrs. Julia Munro): Thank you very much for coming, Mr. Peters. We certainly appreciate you taking the time to be here.

I would just ask committee members to stay back for a moment or two as we consider any kind of responses, any advice to give to research. Otherwise, the committee stands adjourned.

The committee continued in closed session at 1433.

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 29 September 2009

Mardi 29 septembre 2009

The committee met at 0901 in room 228.

ELECTION OF CHAIR

The Clerk of the Committee (Mr. Douglas Arnott): Good morning, honourable members. Owing to a vacancy in the position of Chair of this committee, it is my duty to call upon you to elect a Chair. Are there any nominations, please?

Ms. Lisa MacLeod: I nominate MPP Ernie Hardeman from Oxford as Chair. He'd do a great job.

The Clerk of the Committee (Mr. Douglas Arnott): Are there any further nominations?

Mr. Michael A. Brown: I move nominations be closed.

The Clerk of the Committee (Mr. Douglas Arnott): There being no further nominations, the nominations are closed and Mr. Hardeman is duly elected Chair of the committee.

The Chair (Mr. Ernie Hardeman): Thank you very much. I do want to say I was surprised twice there. I always thought that when someone was nominated they were asked whether they would accept the nomination—and I was, of course, ready to accept it with gratitude, and that was never asked. The second one, I just want to say that that's likely the quickest and the easiest election I've ever gone through in my life, so thank you very much. We look forward to a very productive tenure here as Chair of the government agencies committee.

SUBCOMMITTEE REPORTS

The Chair (Mr. Ernie Hardeman): Our first order of business this morning would be the reports from subcommittees. We have a subcommittee meeting of September 17. It's here for adoption. Do we have a motion for adoption?

Ms. Lisa MacLeod: I move to adopt the subcommittee minutes of Thursday, September 17, and Thursday, September 24, 2009.

The Chair (Mr. Ernie Hardeman): Is there any discussion? If not, all those in favour? All those opposed? The motion is carried.

INTENDED APPOINTMENTS

DEBORAH COYNE

Review of intended appointment, selected by official opposition party: Deborah Coyne, intended appointee as member, Health Professions Appeal and Review Board/Health Services Appeal and Review Board.

The Chair (Mr. Ernie Hardeman): Our purpose for this morning's meeting, of course, is to first of all interview an appointment to a government agency. We only have one to interview today. Deborah Coyne is an intended appointee as a member of the Health Professions Appeal and Review Board and the Health Services Appeal and Review Board. Is Deborah here this morning? If you'd come forward.

As is the practice of the committee, there will be half an hour for this exercise. First of all, we will give you the opportunity for an opening statement. We will then proceed with questioning from all the parties of a 10-minute duration. We will start this morning with questioning from the third party, and then we will rotate for the 10-minute questioning. And just to remind you that the time you take—and take as much as you want—will be deducted from the government questioning.

With that, we will thank you again for coming to the government agencies committee, and we look forward to your presentation and the rest of the program. Thank you again, and the floor is yours.

Ms. Deborah Coyne: Thanks, Mr. Chairman. I did prepare something very short just to keep on track, so I'll read it into the record.

I welcome the opportunity to appear before the Standing Committee on Government Agencies in connection with my proposed cross-appointment as a part-time member to both the Health Services Appeal and Review Board and the Health Professions Appeal and Review Board. Both boards are quasi-judicial adjudicative tribunals charged with holding hearings and conducting reviews into a wide range of areas and under a wide array of legislation: from matters concerning the self-regulating health professions colleges, to decisions of OHIP respecting eligibility and payment, to orders of the medical officer of health or public health inspectors.

I first applied online for a position on one of the health boards in 2006, a few months after the general election, in which I ran unsuccessfully as a Liberal candidate. I had had to resign from my position as a member on the

Immigration and Refugee Board in order to be a candidate. In considering new employment possibilities after the election, I concluded that my approximately seven years on the IRB had provided me with a great deal of adjudicative experience that is very relevant to other boards and commissions.

I have honed my adjudicative and analytical skills over the years and have established a reputation as a fair, efficient and intelligent decision-maker with good judgment. My legal training and broad-ranging interests, together with my ability to synthesize complex issues and to think and write clearly, provide me with an excellent background for membership on HPARB and HSARB—it's a little easier than saying them all the time.

When I did not hear back about my application in 2006, I did not pursue it, and spent a couple of years as primarily a full-time single mother of two children. Earlier this year, I contacted the Public Appointments Secretariat and reapplied. I was then interviewed by the chair of both boards and two vice-chairs. Following this interview, I was offered a part-time cross-appointment to both boards, subject to your approval.

I have been committed to public service throughout my varied careers as a quasi-judicial board member, a public servant, a teacher, an activist, a political candidate, a lawyer and a writer. I am currently a member of both the Liberal Party of Canada and the Ontario Liberal Party, and donate to both. I am fully confident that my political views will in no way impact on my ability to conduct reviews and hearings on both boards in a fair and impartial manner. I am also confident that my political views were not relevant to the assessment of my skills and background leading to this proposed appointment.

I will conclude by saying, most emphatically, that I would never want to be employed on any basis other than merit alone.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. In questioning I said that we would start with the third party, but I guess that will not be possible at the present moment, so we'll start with the government side.

Mr. Michael A. Brown: Thank you, Mr. Hardeman, and congratulations on your very exciting election victory.

Ms. Coyne, I'm delighted that you've put your name forward for this board. I understand you've been interviewed by the chair and others and that you are an extremely qualified candidate, so the government is delighted that you've put your name forward for this position.

The Chair (Mr. Ernie Hardeman): Thank you.

Ms. Lisa MacLeod: My turn?

The Chair (Mr. Ernie Hardeman): Yes. To the opposition side, Ms. MacLeod.

Ms. Lisa MacLeod: Thank you, Mr. Chair. I appreciate the opportunity. Welcome to our committee, Ms. Coyne.

Just a couple of questions for you today: You mentioned that you had run for the Liberal Party of Canada in

2006. I guess that was one of the two ridings that you had scoped out in that election year. You previously considered running in Ottawa West-Nepean—

Ms. Deborah Coyne: That's right.

Ms. Lisa MacLeod: —against infrastructure minister John Baird.

Ms. Deborah Coyne: I considered going for the nomination—

Ms. Lisa MacLeod: You considered running for the nomination. You'd also considered running again in 2008?

Ms. Deborah Coyne: No, not 2008. I resigned in 2007 as a nominated candidate.

Ms. Lisa MacLeod: Okay, and what about if there's an election in the next year? Are you considering a run at federal office again?

Ms. Deborah Coyne: Not at this moment. That is not on my agenda.

Ms. Lisa MacLeod: Okay. You've alluded to the fact that you are a contributor and a member of each of the federal and Ontario wings of the Liberal Party, and that you had spent some time in the Immigration and Refugee Board and had decided to resign as a result of running for federal office for the Liberal Party of Canada.

Ms. Deborah Coyne: I had to resign. You know, it's odd: I would have preferred, and it would have been nice, to have gone back. I thought I was very good at that job, but you're not permitted to—a public servant is allowed to resign or step aside and go back to a job after political office, but you're not allowed to.

Ms. Lisa MacLeod: Right. And you suggest that you honed your adjudicative skills through your experience there. I'm just wondering: This is a health review board. Do you have any experience in the health care field whatsoever?

Ms. Deborah Coyne: I have a lot of general knowledge, but, no, I don't have anything specific, because my understanding is that there is a huge array of legislation and many different things that have to be reviewed. It puts a premium on having an intelligent ability to understand a lot of varied situations and to weigh legislative requirements against the particular circumstances in front of you, and that's the kind of background and experience that I have.

Ms. Lisa MacLeod: But you don't have any experience in health care law or health care policy development per se?

Ms. Deborah Coyne: Not specifically.

Ms. Lisa MacLeod: Do you think that would hinder your ability to act as a credible board member?

Ms. Deborah Coyne: Not at all.

Ms. Lisa MacLeod: And why not?

Ms. Deborah Coyne: Because it's a matter of reviewing and understanding the legislation. I mean, as a lawyer, you're certainly expected, when you go through training, to understand a whole range of fields and legislative requirements, and administrative law is, in and of itself, a kind of discipline which covers a whole range of things. You have to understand how regulations apply

and how hearings and reviews and so forth are conducted. The specifics are just something that you have to be intelligent enough to understand.

Ms. Lisa MacLeod: Are you aware of any of the former adjudications and recommendations contained in any committee reports?

Ms. Deborah Coyne: I understand there is a report on HPAR—I just noticed it in some material that Doug Arnott gave me. It's certainly something I'll be looking into, I guess, when I'm there, but I really thought that it was more appropriate to get appointed first and then get plunged into the details.

Ms. Lisa MacLeod: Kathleen Wynne is your MPP. Has she approached you to sit on a board?

Ms. Deborah Coyne: Not at all.

Ms. Lisa MacLeod: Any other MPP or member of the Premier's staff?

Ms. Deborah Coyne: Not at all.

Ms. Lisa MacLeod: Are you aware that you will receive \$391 a day to sit on this panel?

Ms. Deborah Coyne: I am now. When I looked at the website, it was still \$200.

Ms. Lisa MacLeod: Okay. You don't believe at all that your political connections, either past or present, will have any impact whatsoever on any of your adjudication abilities?

Ms. Deborah Coyne: Not at all.

Ms. Lisa MacLeod: Okay. Thank you very much, Mr. Chair.

The Chair (Mr. Ernie Hardeman): Thank you very much. Since we have not seen the arrival of the third party questioner, we'll conclude our hearing. Thank you

very much, Ms. Coyne, for being here this morning. We look forward to working with you in the future.

Ms. Deborah Coyne: Thank you, Mr. Chair.

The Chair (Mr. Ernie Hardeman): That does conclude all the hearings this morning. We can proceed with the concurrence on the appointment.

Mr. Michael A. Brown: Mr. Chair, I'll move concurrence.

The Chair (Mr. Ernie Hardeman): Okay.

Ms. Lisa MacLeod: Recorded vote, please.

Ayes

Albanese, Brown, Johnson, Naqvi.

Nays

MacLeod.

The Chair (Mr. Ernie Hardeman): I declare the motion carried.

That concludes the business of intended appointments. Any further business of the committee this morning? If not, that—

Mr. Michael A. Brown: I move adjournment.

Ms. Lisa MacLeod: I'll second that.

The Chair (Mr. Ernie Hardeman): We can move adjournment. But before we vote on the adjournment, we would ask the subcommittee to meet right after this committee to discuss the future scheduling of work for the committee.

With that, the motion is moved and passed. We stand adjourned. Thank you very much for your participation this morning.

The committee adjourned at 0914.

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Première session, 39^e législature

Official Report of Debates (Hansard)

Tuesday 20 October 2009

Journal des débats (Hansard)

Mardi 20 octobre 2009

Standing Committee on Government Agencies

Intended appointments

Comité permanent des organismes gouvernementaux

Nominations prévues



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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 20 October 2009

Mardi 20 octobre 2009

The committee met at 0902 in committee room 1.

The Chair (Mr. Ernie Hardeman): We are still short of some members of our committee, but the time of the starting of our committee has arrived, so I want to call to order the Standing Committee on Government Agencies for the meeting of October 20. We welcome the committee members and we also welcome the people in the audience.

Our meeting this morning is to interview intended appointees, and we have two to be reviewed. The first one is Michael Gottheil. He is an intended appointee as a member and chair of the Assessment Review Board, Board of Negotiation, Environmental Review Tribunal and the Ontario Municipal Board. Michael is here, so if he would—oh, no. Well, go ahead and take your seat, Michael.

SUBCOMMITTEE REPORTS

The Chair (Mr. Ernie Hardeman): Before we start the interviews, we do have two items of other business. The first order of business this morning is the subcommittee report of business dated Thursday, October 8. Do we have a motion to adopt the subcommittee report?

Mr. Michael A. Brown: I so move.

The Chair (Mr. Ernie Hardeman): Moved by Mr. Brown. Any discussion on the adoption of the report? If not, all those in favour? All those opposed? The motion's carried.

The second item is the subcommittee report of business dated Thursday, October 15, 2009. Any discussion on the report? If not, all those in favour? Opposed? The motion's carried.

INTENDED APPOINTMENTS

MICHAEL GOTTHEIL

Review of intended appointment, selected by official opposition party: Michael Gottheil, intended appointee as member and chair, Assessment Review Board / Board of Board of Negotiation / Environmental Review Tribunal / Ontario Municipal Board.

The Chair (Mr. Ernie Hardeman): With that, Mr. Gottheil, we'll start on your presentation. You have an opportunity to make opening remarks as they relate to your request to the appointment. We then will be turning it over to questioning. Today we will divide the time

equally, 10 minutes to each party. Any time used by the applicant in their presentation will, as is customary, be deducted from the government party's questioning time. With that, we'll turn the floor over to you, Mr. Gottheil, if you'd like to make your presentation.

Mr. Michael Gottheil: Thank you, Mr. Chair, Madam Vice-Chair and members of the committee, for inviting me to appear this morning.

As the committee is aware, the four boards that I have been nominated to chair have been part of the government's agency cluster project. The project, itself part of an agency modernization, governance and accountability initiative, has seen the grouping together of these tribunals, all of which deal with common or overlapping subject areas and stakeholder communities. In that context, this position is very much an executive lead position, with a focus that includes, I think, the following elements: providing vision and strategic direction for the entire cluster and the member tribunals; being accountable for the tribunals' mandate and the successful achievement of that mandate—which is, of course, resolving applications and appeals that are brought before the tribunals fairly expeditiously and in a way that's consistent with legislative objectives; optimizing the use of existing resources, again to ensure the tribunals can best achieve and succeed in their mandates; working to further develop and enhance adjudicator expertise and competencies within each of the tribunals and, as well, across the cluster as a whole; developing consistent best practices and dispute resolution, and the administration of justice; and finally, promoting positive stakeholder engagement—and this is because a critical part of the tribunals' success is that the public must understand the role and statutory mandate of a tribunal, and at the same time the practices and procedures of a tribunal must be responsive to the needs of a stakeholder community.

Now, over the past four and a half years I've served as chair of the Human Rights Tribunal of Ontario. I feel honoured and extremely fortunate to have had the opportunity to play a key leadership role, working with others in government, the Ontario public service and the broader stakeholder community, in building and transforming the Human Rights Tribunal.

While there may be differing views about the appropriate enforcement regime in the area of human rights, I believe that the tribunal user community sees the new tribunal as a modern, well-run and effective adjudicative

agency which embodies the highest principles of integrity and excellence in public service. The experience and knowledge I have gained at the Human Rights Tribunal will serve me well, I believe, in this new role, if I am appointed.

Likewise, my commitment to diversity, accessibility, accommodation and the provision of services throughout the province and in both official languages are things that I will bring with me to this new role.

My relatively recent career in public service came after practising law for close to 20 years in the private sector. In 1991, with two colleagues, I began a law practice in Ottawa which grew to be one of the most respected and successful labour, employment, human rights and administrative law firms in the city. I was also managing partner over the years, and in that capacity was responsible for the overall operational and financial aspects of the business.

Finally, on a more personal note, I've experienced and met the challenges of vision loss. Now, why is that important or relevant here? Because, as many of you around this table will know, amongst the greatest positive qualities people with disabilities develop—out of necessity perhaps—are focused determination, creativity and the ability to work with others to achieve real, meaningful and effective results.

Thank you, and I look forward to your questions.

The Chair (Mr. Ernie Hardeman): Thank you very much. We will begin the questioning with the official opposition this morning.

0910

Ms. Lisa MacLeod: Thank you, Mr. Chair. Welcome back, Mr. Gottheil. I think you just come in here to see us. You must be very excited to be back at committee.

Interjection.

Ms. Lisa MacLeod: Everyone is excited to come to this committee on Tuesday mornings.

Mr. Gottheil, we have several questions in the official opposition. Because this is a new superministry and there wasn't a lot of consultation, particularly among members of the Ontario Legislature, several of the critics within the PC caucus sent me questions. If it would be okay with you, what I'd like to do is have my assistant bring you over a copy—I'll ask them—and I would request, within the next seven days, if we don't have the time, if you would submit to the committee your responses, because there are 29 of them. They're not too, too hard, but I think it will give my caucus colleagues a sense of what to expect with this new superministry. Is that okay?

Mr. Michael Gottheil: My understanding is I'm here today. I'm not quite sure—

Ms. Lisa MacLeod: I'll be requesting a deferral for seven days before I can make my decision, as my caucus colleague Mr. Wilson will be doing. So the vote wouldn't take place for seven more days. I'm just right now, through the Chair, requesting a deferral. Is that possible for you to provide us with the answers?

Mr. Michael Gottheil: I'm not sure what the questions are or—

Ms. Lisa MacLeod: I'll ask them, then. We'd like to know, in the official opposition—

Mr. Michael A. Brown: Just on a point of order, Mr. Chair: Is that appropriate?

The Chair (Mr. Ernie Hardeman): Yes, it is. Standing order 108, I believe, paragraph 8, suggests that any member of the committee may ask for a seven-day deferral on the vote of the concurrence.

Mr. Michael A. Brown: I'm not asking about the deferral—

The Chair (Mr. Ernie Hardeman): Standing order 110(b) allows the gathering of information but only from the applicant who is here. So it is, according to the rules, an appropriate approach to—

Mr. Michael A. Brown: Thank you.

Ms. Lisa MacLeod: So according to the standing orders, I'd like the request. If we have time, then we can begin to answer some.

I'd like to know who interviewed you for this position.

To be the super-chair of all the boards, can you tell us what type of experience you've had with land development, heritage conservation, environmental hearings and/or assessment hearings?

We have a subjective question: If a municipality decides at the council level to refuse to approve a high-rise development next to existing subway lines and major intersections in the city, and if the political decision is clearly supported by the community, what do you believe your role is as chair of the OMB?

If an OMB member decides to ignore the city's refusal and deems a development worthy of approval, how would you respond to a cabinet minister calling you to ask for your intervention to overturn the member's decision?

What is the court's role, in your opinion, in dealing with decisions of the OMB?

How do you believe the assessment review board's determination of an appeal affects the overall tax base for a particular municipality?

What is your view on the city's arbitrary use of section 37 of the Planning Act?

Based upon your lack of experience in any of these fields, why did you take this position? Why did you apply? Are you friends with Deb Roberts and Kevin Whitaker?

How could you possibly assess whether a decision of a particular board warrants a rehearing? What is a decision you, as chair, would make when you have absolutely no experience?

You have never practised as a lawyer in the area of land development, yet you believe you are qualified to be the chair of the OMB. You never sat on a planning board or a committee of a municipality yet believe you should be the chair of the most important tribunal relating to land development in the province of Ontario. My colleagues would like to know why.

You've not practised law in the area of tax assessment and have never been involved as an expert in expropriations. Again, they would like to know why you would like to be tribunal chair.

We'd also like to know your specific experiences in the planning and land development process.

Have you ever participated or worked in the planning process with municipalities, held public office with rate-payers' associations, with non-profit advocacy groups such as Greenpeace, the Sierra Club or Environmental Defence?

Have you been published regarding the Planning Act or the planning and development process in Ontario? If yes, please provide the committee with details.

Have you studied urban planning, regional planning, urban design, urban geography?

The OMB is subject to much provincial policy and must follow it; nonetheless, many grey areas exist. Will you give directives to OMB members about how they should come down within these grey areas?

How will you deal with calls from cabinet ministers about cases before the OMB?

How do you intend to deal with the scheduling of appeals that involve high economic priority such as job creation? Will the process that is used be any different?

As nominated chair of a very important, powerful tribunal, how do you see the chair's relationship with the government and ministers of the crown?

How many OMB hearings have you attended? Which ones? Did you sit in for the entire event?

Which OMB decisions do you think are the most important parts of its jurisprudence?

Do you favour greater use of holding policies and holding provisions to defer land development until certain things happen?

What are TIFF-like policies and are they gaining in their usage since the Planning Act was amended to encourage their usage? How should the OMB approach TIFF-like policies when included in an official plan which seeks to open the door to provincial funding this way?

Have you been on the planning board of any municipality?

Recognizing that those who appear before the OMB have most of the rights of natural justice, what, if anything, will you do to try to and shorten the length of OMB hearings?

Much has been made, particularly in a recent Ottawa case, about the OMB taking into account the wishes of the municipalities. What does this mean to you and how will you see to it, or will you leave this up to your members?

When it came to power, the McGuinty government pledged to give more power to municipalities, yet has launched several OMB challenges and appeals against them, such as in Niagara and York region, and has been very active in promoting its interpretation of the growth plan with Durham region, Halton region, York region and Simcoe county. How do you feel the province should be treated when appearing before the OMB when it wears the three hats of legislator, policy-maker and intervener?

Under what circumstances can the OMB chair appoint members of different tribunals to a single panel, say,

under the Ontario Heritage Act dealing with the matters of demolishing of heritage buildings? Will you appoint Conservation Review Board members to sit with OMB members?

How much time do I have left, Mr. Chair?

The Chair (Mr. Ernie Hardeman): You have about three minutes left.

Ms. Lisa MacLeod: Okay. Those are the questions that I'd like answered. There are a few that I'd like on the record right now. We'd like to know who interviewed you for this position.

Mr. Michael Gottheil: Debra Roberts, Kevin Whitaker and Mark Leach, who's the assistant deputy Attorney General.

Ms. Lisa MacLeod: Based on your lack of experience in any of the fields that we're talking about here today, why did you take this position? Is it because of your friendship or your relationship with these aforementioned deputy ministers and public servants?

Mr. Michael Gottheil: Absolutely not. The reason I applied for the position—I'm interested in the position, and I believe, with the greatest of respect, that I'm qualified for the position. There are a couple of things. As I mentioned, I see this role as an executive lead. First of all, I have experience as a tribunal chair. I have experience in administrative law, of which municipal law and environmental law are a part, and I have experience in modern, effective dispute resolution processes.

Now, it is true I don't have specific practice experience in the municipal law area, but jurisprudence and case law are things that certainly one can learn fairly quickly. The skill, experience and knowledge, however, and the abilities that I do bring to these agencies, to this specific job, are no less specific and no less important to the tribunal's work.

So, first of all, issues of access to justice, and I know some of your caucus members have raised that—

Ms. Lisa MacLeod: But I think the question is, you don't have experience with tax assessment. You're not an expert in expropriations. You don't have a planning background, whether that's urban, regional or urban design, urban geography. These are all serious questions when you're dealing with a cluster for the Assessment Review Board and the Environmental Review Board and the Ontario Municipal Board and conservation—

Mr. Michael Gottheil: Yes. What I was trying to say is that these boards have a long history and have a great amount of subject area expertise. What I bring to the table are the experience and knowledge and the ability to put into place questions of access to justice, questions of expediting proceedings, questions of case management, questions of ensuring that the decisions are—

Ms. Lisa MacLeod: It's sort of like taking a hockey coach and making him general manager of a baseball team.

Mr. Michael Gottheil: No. I think what a tribunal—

Ms. Lisa MacLeod: That's exactly what it is.

Mr. Michael Gottheil: What a tribunal chair brings to a tribunal, one of the things that is needed, I believe, and what I think that governments generally and, quite

frankly, the justice system and the courts are recognizing is that effective, fair, transparent dispute resolutions are an important part of ensuring access to justice.

Ms. Lisa MacLeod: But this isn't just about dispute resolutions, is it now? It's about assessments. It's about negotiations. It's about environmental review. It's about Ontario municipal policy. It's about the planning of the province. It's also about conservation of our heritage institutions. This is not the Human Rights Tribunal of Ontario. This is a supercluster of how the province of Ontario's planning will be executed over the next couple of years. That's why I've got concerns.

I'm looking forward to the answers to my questions and, again, I'll call for a deferral. Thank you, Mr. Chair. Thank you, Mr. Gottheil. It's good to see you again.

0920

The Chair (Mr. Ernie Hardeman): Thank you very much. The third party committee member, you have 10 minutes.

Mr. Howard Hampton: I have a couple of questions. They don't necessarily relate to your expertise, but one of the issues that is raised is that chairs of boards or commissions should exercise clear and primary responsibility for the assignment of panels and adjudicators. There is some similarity between the work of the four boards, but I think you'd also agree that there are some big differences. So I guess my first question would be, if you're the chair of all four, how do you see your job of assigning panel members and adjudicators? How do you see one person staying on top of that given the caseloads, and the diversity of the caseloads, and the potential down the road for some conflicts?

Mr. Michael Gottheil: I guess I would identify two points in answering your questions. The first is, tribunals that have large caseloads, for example, the Landlord and Tenant Board, the Human Rights Tribunal, the Assessment Review Board—the Assessment Review Board currently has over 90,000 cases a year. Mr. Stephenson, who is the chair currently, doesn't personally assign adjudicators to each and every one of those 90,000 cases. What he does, working with the staff and the registrar, is two things. One is to ensure that there are sufficiently competent people on the board that assignments can be made. The other thing that I'm sure he does, and certainly I have done at the Human Rights Tribunal and other effective tribunals, too, is set up mechanisms, triage processes and front-end case processing mechanisms that allow the tribunal and its staff to identify particular types of cases that may need particular types of expertise.

For example, in the assessment field, as you mentioned, there are complex commercial assessment questions. Those may in fact need a particular type of expertise and background. So those kinds of cases are sort of pulled out, and then there's a discussion that's had with the chair and the tribunal staff on who is best suited for that position, who's available and that sort of thing. I guess the answer is that you put into place processes to identify, to triage particular kinds of cases.

The second point—and I made this point a minute ago in answering Ms. MacLeod's question—is that I think

there's an understanding in tribunals, administrative law and in the justice system generally that expertise in the justice field, in the legal field, is in part expertise in the subject area, but it's also expertise in dispute resolution. There may be individuals on the tribunal who have greater skill, for example, in mediation or case management. So if it's a case that cries out, given the nature of the case, for mediation or active case management, you're going to assign that person.

Those are the things that I have done, that I'm aware of. I'm part of the community that studies and then looks at those things. I guess that's how I would answer your question.

Mr. Howard Hampton: I'd accept that some of the boards as they stand now have opportunity for things like mediation, but some of them are just clearly very confrontational. For example, a developer has one view of how things ought to be and a group of ratepayers has a very different view of how things ought to be. I'm wondering, when you have very opposing views, where does mediation fit into that at all?

Mr. Michael Gottheil: It may not, actually, and that's part of the skill set that chairs bring to the job, that I bring to the job. Of course, working with the existing expertise at the tribunal—just for example, at the OMB, the current chair is Marie Hubbard. Mr. Wilson Lee, who's been there for many years, has had a role of—I think the way it's termed is as an operational vice-chair. Certainly the role of a leader and a chair is to call upon the expertise, but you raise a good point—and I think the courts have recognized as well that there's no point in having mandatory mediation in a case that doesn't lend itself to that and, in fact, only will delay.

But this again is some of the expertise and knowledge that individuals like myself, who are experienced in the justice and the administration of justice field, talk about and write about—there are papers and so forth. So you raise a good point, and that's part of what a chair does with his or her staff.

Mr. Howard Hampton: As I listen to your responses, it almost sounds as if you would be considering cross-appointments, in other words, people who are appointed not just to one board or commission, but to perhaps all four or three out of four. Is that in your mind?

Mr. Michael Gottheil: That may be an effective way to enhance expertise. Currently, for example, the various statutes themselves that the four boards deal with contemplate, for example, consolidated hearings, where there are members from the Environmental Review Tribunal and the Ontario Municipal Board hearing a case that has both planning and environmental aspects. But there are people currently on the Environmental Review Tribunal, for example—Mr. DeMarco is a vice-chair who is actually a planner. So there may, in fact, be cases that are before only the municipal board, where the hearing process, the fairness and the outcomes could be enhanced and made more effective by cross-appointments.

That is something that I think is happening in the tribunal community more broadly to actually leverage

and benefit from expertise that one vice-chair or member has in relation to issues that come up at another board.

Mr. Howard Hampton: Since those cross-appointments, as I understand it, happen already, and already there are mechanisms for joint board hearings where obviously the issues raise questions—some might deal with planning, some might deal with environmental issues, some might deal with conservation issues—it seems to me there is a real issue here. You've got four boards, a couple of which are very busy, and even where a decision is made, the decisions are often very controversial and where, if people have deep pockets, the chances are they're going to go on and find some way of overturning the board's decision because all kinds of money turns on the board's decision.

How does having one person in charge of something that is so diverse, so large and has so many different kinds of operations—I don't understand how this is going to lead to some kind of efficiency. In fact, I really wonder how one person can ride herd on something that is this large, this diverse and, in some cases, loaded with so many financial interests. I think Ms. MacLeod asked a fair question here. Political interference in some of these decisions is not an unusual thing. How does one person ride this kind of unruly horse and avoid the kinds of conflicts and the accusations of political interference?

Mr. Michael Gottheil: The common thread, if you will, in your question—which is a fair one—I think comes back to the focus of what I see this role is and where I have the expertise, in terms of both my experience before I came to the public service and over the four and a half years, which is, as I said, to provide vision and clear codes of conduct—that may speak to the political interference—excellence in decision writing and adjudication.

0930

As you improve the quality of administration of justice, the quality of adjudication and the quality of dispute resolution, and the roles that are consistent the cluster, that's where the benefit of clustering—

The Chair (Mr. Ernie Hardeman): If we could wrap it up, that concludes the time for the third party. We now have four minutes left for the government side to ask questions.

Mr. Michael A. Brown: I just want to indicate our very sincere appreciation for your putting your name forward for this particular position. It will be challenging. I'm sure that your experience at the Human Rights Tribunal as the chair has served you well; we believe it to be so. I want to indicate the government will be supporting your nomination.

Mr. Michael Gottheil: Thank you.

The Chair (Mr. Ernie Hardeman): Thank you very much. That concludes the questioning. As was mentioned in the official opposition's request, if you could answer those questions, then hopefully we can deal with it a week from today when we have our committee meeting again, as to the committee's position on the appointment.

Thank you very much for your attendance today.

SUSAN KADIS

Review of intended appointment, selected by official opposition party: Susan Kadis, intended appointee as member, Criminal Injuries Compensation Board.

The Chair (Mr. Ernie Hardeman): The second interview is with Susan Kadis, intended appointee as member, Criminal Injuries Compensation Board. As you come forward and sit down, you may be aware you will have an opportunity, if you choose to do so, to make a few comments. Any comments and time that you take in this half-hour interview will be deducted from the government side when it comes to questioning. Then each of the parties will have an opportunity to use their 10 minutes to question you. Hopefully, at the end of that, they will come to some decision as to whether they concur with the government's wish to appoint you to the Criminal Injuries Compensation Board. Thank you very much for joining us this morning. We will start the questioning with the third party after your presentation.

Ms. Susan Kadis: Good morning, Mr. Chair and members of the committee. Thank you for the opportunity to speak before you today as you review my application to serve as an adjudicator on the Criminal Injuries Compensation Board.

My name is Susan Kadis. I have served in the best interests of our community, province and country in both elected and non-elected capacities. This includes numerous volunteer committees, boards and initiatives and my time as a public school trustee, city councillor and MP.

This, together with my business background, has enabled me to acquire and strengthen my knowledge, skills, experience and professionalism, which I believe qualify me to serve as an adjudicator on the Criminal Injuries Compensation Board.

If selected, I will diligently apply my strong objective, analytical, listening, interpersonal and writing skills as well as empathy to the responsibilities of a member of the CICB.

I participated previously in quasi-judicial roles in matters involving student suspension appeals, personnel and property, where I was required to weigh evidence and render decisions, often involving conflicting and contentious points of view—parents and children etc.

Very importantly, the safety and well-being of the public and the greater community have always been and continue to be of the highest priority to me. This is reflected consistently in multiple safety- and crime-related efforts and initiatives that I've actively engaged in and worked on vigorously through the years and through my life. They include my work developing the York Region District School Board's safe schools policy, which deals with bullying and intimidation, among many other initiatives. I also served as a community member and vice-chair of the city of Vaughan's vandalism committee, now the safe city committee.

In addition, as an MP, I initiated and organized initiatives focused on preventing, fighting and tackling crime, finding solutions and supporting victims of violent crime.

I led a task force across the country to create and provide a funding model for institutions of at-risk communities. In cross-country consultations, I heard at first-hand Canadians' experiences as victims of hate crimes, including firebombing and destruction of community facilities.

I also took a lead role on behalf of the federal government of the day in organizing a GTA symposium, a forum on gun violence and urban crime. We engaged numerous stakeholders in this effort: experts in preventing and tackling crime, including municipal and provincial government and law enforcement; community organizations, including victims of violent crime. In addition, I met with victims and families of victims of the Dawson College shootings tragedy.

These experiences, in total, and others, all enhanced my understanding, sensitivity and empathy toward the profound and often devastating life-changing impact of violent crime on victims and their families, which I believe will assist me greatly if selected in my role of adjudicator on the board.

In conclusion, I have demonstrated my ability to perform tasks, duties and responsibilities in a highly professional, fair-minded, non-partisan and timely manner, and always with a good understanding of how to apply the pertinent statutes, rules and legislation.

I look forward, if approved, to serving the public and helping to support, in a sense, victims of violent crime on this board.

The Chair (Mr. Ernie Hardeman): Thank you very much. With that, we'll ask Mr. Hampton. Questions?

Mr. Howard Hampton: Tell me what you know about the Criminal Injuries Compensation Board.

Ms. Susan Kadis: It was enacted around 1970, if I'm not mistaken, and there have been some amendments along the way. There has been an Ombudsman's report—I believe the Marin report—and the McMurtry report as well. I know the Ombudsman one is at an arms-length nature—definitely.

I know there were recommendations put forward. I can't say necessarily that all have been adopted, because I wouldn't know, having not served on the board at this point in time. But I would agree, in principle, with some of the recommendations that I'm at least aware of and have some knowledge of, in the sense that my own work with victims of violent crime—how important and how imperative it is that claims and applicants are dealt with in a timely fashion, so that the victims who have been deemed so under the act and have shown, in the balance of probabilities, to have been victimized and injured as a result—or death, in the case of dependents—have been given that assistance at the time they actually need it, when they have been traumatized through crime.

Mr. Howard Hampton: You're aware that this board has a fair bit of controversy associated with it?

Ms. Susan Kadis: Again, to the best of my information, and what was sent to me as well, certainly these recommendations have been made; reports have been carried forward.

I can't comment on the full extent of how the board has utilized these recommendations in every sense and

every recommendation, but I can see, from the information that was provided to me at this point, that efforts are being made to reduce the backlog, which was referenced, and to provide that assistance in as user-friendly a way as possible—in a supportive, caring environment—and to ensure that victims of violent crime receive the support that they are seeking as soon as is feasible and still within the context of the act.

Mr. Howard Hampton: One of the issues that's controversial with this board is that, if you look at the awards that have been made, in many cases, awards have been made to police officers and to jail guards, who are also eligible for compensation, for example, under the workers' compensation system, the WSIB system, and/or other forms of insurance. So you could effectively have a situation of double dipping.

At the same time, this board has been criticized over and over again because a lot of victims are forced to wait years to even have their case heard. Then, when they are awarded some kind of compensation, it is obviously and clearly inadequate compared to the harm that has been suffered.

How do you feel about apparent double dipping on one side of the equation while other people who have suffered criminal injuries are forced to wait many months, if not years, and then the award that they receive would be perceived by any reasonable person to be an inadequate award?

0940

Ms. Susan Kadis: I think in terms of whether police or prison guards should be included—and I have followed it somewhat in the news recently, of course. It has been there as an issue raised. Presently the legislation does include these individuals—they are eligible to apply. Again, in any case, whether it's police or non-police or peace officers, I believe, they still need to show eligibility—that they do meet the criteria of the act.

I feel that as an adjudicator, if I am approved on this board, any adjudicator on this particular board takes their direction from the legislation. Therefore, presently it does include them. Then if the legislators, such as yourselves, change or amend that, then also as an adjudicator, I believe it would be my responsibility to follow that direction. I don't think it's the role of the adjudicator in this case, on this particular board, to decide that aspect of it.

But going on to the second issue of whether true victims of violent crime are receiving what they need and adequate resources—and it was somewhat referenced in the various reports—I do feel that you need to continually reassess in cases such as these whether it is meeting the standard of the act, the purpose and the essential goal or principle of the act, which is to help victims of violent crime. I think it needs to be reassessed all the time. That goes for many other boards or mechanisms such as this, because things don't stay static, and to be accountable, you have to ensure that it is meeting the needs that it set out to.

I can assure you that if I am selected as an adjudicator, I will never lose sight of the primary goal of this board,

which is to help victims of violent crime. If you lose sight of that, then the board's purpose is going to be undermined.

I believe that those recommendations—again, some of which I can comment on and others I can't, because I don't have the knowledge that I will have if approved to the board—need to be continually examined to ensure that you are—let's say myself or any one colleague—meeting that mandate.

Mr. Howard Hampton: One of the other areas where concerns have been raised is situations where it's discovered that applicants for compensation were themselves involved in the commission of the crime. So there's been a fair bit of controversy about someone receiving compensation from the board when it's clearly on the record that they were involved at some level in the commission of the crime.

Again, I put this question to you: This is a board that has a sorry history of forcing many people who have been victims of criminal activity and who deserve some kind of compensation to wait many months, if not years, and then those people receive compensation awards that are clearly inadequate by any reasonable standard—clearly inadequate. How do you feel about that scenario, where you have people who obviously deserve timely compensation and deserve compensation that responds to the injury that was done, but are being forced to wait long periods of time? Meanwhile, somebody who was actually involved in the commission of the crime at some level is being compensated.

Ms. Susan Kadis: Again, to the best of my knowledge, information I've received to date and my understanding to date, the behaviour of applicants is one of the aspects that is to be taken under consideration; that is very clear. In other words, it sets out here that it is in principle, essentially, to be an unprovoked, innocent victim. That is an applicant who potentially can receive some funding assistance for the trauma they've experienced. So, yes, I think it's very clear that the behaviour is to be one aspect that is to be taken into consideration. It cannot be completely cast aside or overlooked.

If I may, regarding the previous question, because the second question had some components of the first one, from my understanding, it is clear that you are also, as an adjudicator on this board, to take into consideration if the applicants are receiving any other form of financial support, whether it's employment insurance, workplace support etc. You're not discarding those forms of support or compensation. It all goes into the mix when you assess the fullness of the information objectively and thoughtfully prior to making your final judgment or award decision, whether in fact you're deeming the individual to be a victim as under the act and they have shown so with documenting support evidence and how much that equates to. Again, you have to really examine.

Being one who likes to examine things in their fullness and not rush to judgment either, I'm confident that I will take all those aspects into serious consideration and

try to make the best, most appropriate decision possible, again, in the context of the act.

The Chair (Mr. Ernie Hardeman): Thank you very much. That concludes your time, Mr. Hampton. To the government.

Mr. Michael A. Brown: Thank you, Ms. Kadis, for putting your name forward for this very important board. I note your community involvement, your involvement with volunteer organizations, your involvement in government in general, and understand that your adjudicative skills, which are going to be tested by this, are very good. We appreciate you putting your name forward and wish to indicate that we will be supporting your appointment.

The Chair (Mr. Ernie Hardeman): To the official opposition.

Mr. Jim Wilson: Welcome, Ms. Kadis, to the board. I just have a few short questions. To begin with, how did you become aware of this appointment?

Ms. Susan Kadis: I was, post my last federal election, looking for a different way of serving. As I referenced briefly in my opening remarks, serving the community and trying to make a difference in different capacities is very much a part of me. It's very natural for me to look for another way of serving the community and public, hopefully in a positive way. I was aware, to some degree, of this type of position and these types of boards; I wouldn't say extensively because I was busy for many years working on many things, but I was somewhat aware of it. I went on the website to learn a little bit about the whole process because I didn't have a lot of knowledge previously. I started looking around and seeing what is available, what are the mandates of these various roles and which one I think would fit my skill set, my experience and my desire to serve. There were vacancies for this particular board, CICB, and I applied online directly.

Mr. Jim Wilson: Since finding it on the website, who did you talk to in preparation before coming to the committee today? Did you talk to bureaucrats or politicians?

Ms. Susan Kadis: Not politicians, no. Basically, not very much, because with my background I didn't feel too much need to find out too much in preparation except actually what the work of the board is and an adjudicator per se—and think back on why, again, I feel that I'm well-suited and can be an effective adjudicator on this particular board. I spent most of my time preparing in that sense, thinking back over why I feel I can contribute positively through this process and mechanism to have a positive impact on the lives of victims of violent crime; what I can bring to the table in that sense through my own experience with victims of violent crime and in related areas; and my experience in working with contentious issues, conflict and dispute resolution, things of that nature. So I thought a lot about what I can do and how I can hopefully enhance the process.

0950

Ultimately, I was asked—I had an interview. I applied around the first week of April, on April 7. I saw it; I applied immediately. I heard from the board directly a

couple of weeks after to arrange an interview and I went, I think, at the beginning of May, around the first week in May. I met with the chair and the vice-chair, which was very useful, actually, because you don't know who you're meeting with exactly and you might think it's the chair and members. It was actually good to meet with both of them. Again, I think it pushed me a little bit further along in my learning process of what this board does and the important work that it does.

I heard then from the clerk and the standing committee sent me a package online and through a courier. The Public Appointments Secretariat sent me some information—possible questions, somewhat similar to that. Then Friday, I got more information from the standing committee—Mr. Johnston—with a bit of an overview, which was very helpful.

Mr. Jim Wilson: Okay, thank you. I have no doubt from looking at your experience and your parliamentary experience that you have the necessary prerequisites to serve. But I just want to make sure, on the political side, because this is quasi-judicial and arm's-length, as you and Mr. Hampton have alluded to, are you still a member of the Liberal Party, either federally or provincially?

Ms. Susan Kadis: I'm not provincially; I am federally. I understand that in this type of role, it's not only that you must be completely politically neutral—not support candidates and everything that entails—but that in particular in adjudicative cases, from what I understand, it is highly restricted. Again, I am a very conscientious individual who takes any responsibilities and tasks or duties before me very seriously. I fully understand what that entails and that it completely precludes any type or any form or fashion of political involvement whatsoever.

Mr. Jim Wilson: And may I suggest, just to make sure you do rip up your membership card in the federal party—

Ms. Susan Kadis: No rejoining. I fully understand.

Mr. Jim Wilson: Not leave any paper trails around.

Ms. Susan Kadis: I fully understand.

Mr. Jim Wilson: Okay. So you have a good understanding of that and that political interference of any type is not to be tolerated.

Ms. Susan Kadis: Of course.

Mr. Jim Wilson: Finally, in terms of the last round of questioning, are you familiar with the Ombudsman's report of 2007 and its recommendations, and do you think the government is implementing it fast enough?

Ms. Susan Kadis: The Marin report, I'm assuming you're—

Mr. Jim Wilson: Yes.

Ms. Susan Kadis: Again, it would be hard for me to comment fully or extensively on it until I would be on the board, if I am selected, and to say I think you're doing it quickly enough or it should be quicker, or it's too slow or whatever. It would be very inappropriate, I think, for me to say that.

I would just say that from the information I've received, which is all I can really go by at this point, they appear to be reducing the backlog, which is one of the

things that was referenced significantly in that report. And it should be timely, and that was referenced; it definitely should be timely. I mean, if you're a victim and you've been traumatized, these are crimes of a very serious nature under the Criminal Code, as we know—murder, sexual assault, assault per se, along those lines.

We can imagine and understand—and having some experience first-hand with victims of violent crime—how it would be very difficult to even have to come up before a board and express why you believe you need this support, just to actually go through it again. That is why it is so pivotal, as referenced in the report as well, that applicants must have the opportunity in a supportive, caring environment, in a comfortable, safe environment as user-friendly as possible, where they do not feel revictimized after already being victimized.

Mr. Jim Wilson: I'm just wondering—and Mr. Hampton alluded to it—about the adequacy of the compensation the board's allowed to award victims. There are limits in each of the categories. Do you have any personal comments on that? If I was a member of the government, I'd want to know if my appointee had any personal comments on that.

Ms. Susan Kadis: Could you just clarify what you mean? If I agree with the math? I'm sorry, if you could just—

Mr. Jim Wilson: Well, one of the things that the Attorney General has had to deal with over the years is obviously the cost of compensation. Victims, in most cases I think, don't feel adequately compensated, yet it's quite a large bill for the government to pay each year. So there's a balance there that adjudicators have to take into account, and there are legislated limits to what you can award. Are you aware of those limits? Do you have any comments about them?

Ms. Susan Kadis: Of course if I am selected, then I will go through extensive training, after which I'll have more knowledge regarding those specifics, but again, I think it suffices to say that there are limits per se to what can be expended in any particular case for service that a government provides, albeit on an independent basis through an adjudicator. You're still accountable to the Legislature, and at the end of the day, of course it is taxpayers' money. It's not infinite, what can be offered, but there has to be a level of adequacy. It has to meet the needs as best it can. In other words, if it's of a medical nature, if it's counselling, whatever fits that. Each case also has to be looked at on its own individual merit. I think that goes into the equation also.

Mr. Jim Wilson: Just for the record, really, but in the foreseeable future or as you see into the future, are you planning on running for any public offices again?

Ms. Susan Kadis: No, I'm not planning to.

Mr. Jim Wilson: Okay, fair ball.

The Chair (Mr. Ernie Hardeman): That concludes the interview, so thank you very much for coming in. We wish you well.

Ms. Susan Kadis: Thank you to the committee and to Mr. Chair.

The Chair (Mr. Ernie Hardeman): That does conclude our interviews this morning.

The first one, as we mentioned earlier, there was discussion under standing order 108(f)8. The vote for concurrence on that will be deferred for seven days.

Mr. Michael A. Brown: Could that be officially requested? Can somebody request that officially?

The Chair (Mr. Ernie Hardeman): She did twice.

Mr. Michael A. Brown: But at this point—

The Chair (Mr. Ernie Hardeman): It was officially in the record in the discussion, that she was requesting it. The standing order does not say it must be written or that it must be at any certain time that it's requested; it just says that it may be requested by a member. I would presume that that has been done because it was done on the record. So with the concurrence of the committee, we will put that vote off until a week from today.

Number 2: Susan Kadis, intended appointee as a member for the Criminal Injuries Compensation Board.

Mr. Michael A. Brown: I move concurrence.

The Chair (Mr. Ernie Hardeman): Mr. Brown moves concurrence. Any discussion? No? All those in favour? Opposed? Seeing none, we'll go with that concurrence.

That concludes the meeting for today. We will adjourn until 9 o'clock on Tuesday, October 27, in committee room 1. Hopefully, we will resume the writing of the report on the Human Rights Tribunal. We also have an intended appointee to interview, so it will be a meeting of the two issues together.

Again, thank you all for your participation this morning. We look forward to seeing you next week, same time, same station with the same problems.

The committee adjourned at 1002.

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Journal des débats (Hansard)

Mardi 27 octobre 2009

Standing Committee on Government Agencies

Intended appointments

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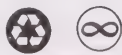
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 27 October 2009

Mardi 27 octobre 2009

The committee met at 0905 in committee room 1.

INTENDED APPOINTMENTS

MICHAEL GOTTHEIL

Review of intended appointment, selected by official opposition party: Michael Gottheil, intended appointee as member and chair, Assessment Review Board / Board of Board of Negotiation / Environmental Review Tribunal / Ontario Municipal Board.

The Chair (Mr. Ernie Hardeman): I think it is 9 o'clock, so we will call the Standing Committee on Government Agencies to order—

Interjection.

The Chair (Mr. Ernie Hardeman): Oh, and I'm being told I'm supposed to use the gavel—just to show you that I can do it.

Mr. Michael A. Brown: Very good.

The Chair (Mr. Ernie Hardeman): That was the first part of the course in the training session on being Chair.

Mr. Michael A. Brown: You have to practise.

The Chair (Mr. Ernie Hardeman): Exactly.

The first order of business this morning is dealing with the concurrence vote on a deferred vote from the previous meeting. I guess we have a motion.

Mr. Michael A. Brown: Mr. Chair, upon reviewing the transcript from last week and having had a week to consider the deferred vote, I wish to have on the record that I am incredibly disappointed with the treatment of the intended appointee. Mr. Gottheil was treated, in our view, harshly by Ms. MacLeod. Her line of questioning was offensive, demeaning and highly disrespectful.

Words cannot describe how I and my colleagues cringed at the memory of Ms. MacLeod presenting written questions in tiny font to a citizen with a sight impediment. Would it have been too much to ask that these questions be presented at least in an electronic way so he could have accessed them?

In briefly reviewing these questions, one must wonder why the official opposition—

The Chair (Mr. Ernie Hardeman): If I could stop you there, Mr. Brown, and have a motion. There are opportunities to debate the motion, but unless we have a motion, then we're not open to debate.

Mr. Michael A. Brown: All right. I'll make the motion to concur in the appointment of Michael Gottheil.

The Chair (Mr. Ernie Hardeman): Thank you very much. We have a motion to concur with the appointment. Discussion?

Mr. Michael A. Brown: I will start over then, Mr. Chair.

Upon reviewing the transcript last week and having had a week to consider the deferred vote, I wish to have on the record that we are incredibly disappointed with the treatment of the intended appointee, Michael Gottheil, by Ms. MacLeod. Her line of questioning was offensive, demeaning and highly disrespectful.

Would it have been too much for the member to have presented electronically to him? I cringe at the memory of Ms. MacLeod presenting written questions in a tiny font to a member of Ontario society, a citizen, with a sight impairment.

Briefly reviewing the questions, we must wonder why the official opposition felt it necessary to ask the same question 11 different ways.

Mr. Gottheil is a respected and accomplished leader in the administrative justice field. His qualifications to lead a new grouping of tribunals are beyond reproach. He had just finished establishing the Human Rights Tribunal, which involved comparable complexities. He is an expert in administrative justice. It is true that he is not an expert in the subject matter of each component tribunal. I would suggest to Ms. MacLeod that there is nobody in the province who could do that. That is why each tribunal will be led by an expert with management and operational duties.

It is also important at this time, on behalf of government members, to clearly and unequivocally express our view that the Chair erred in his ruling about the legitimacy of presenting written questions. Our rules are very clear: There are 10 minutes per caucus. That is all the time for both posing and answering questions.

It is my understanding that Mr. Gottheil has provided answers to the general themes presented by the official opposition. That is a credit to his character and his integrity. Ms. MacLeod would do well to learn by his example.

The Chair (Mr. Ernie Hardeman): Thank you very much for the comments. Ms. MacLeod?

Ms. Lisa MacLeod: What is truly cringeworthy here is this written statement provided orally from the Premier's office by the member opposite. What is truly cringeworthy is the treatment by which taxpayers in this province have had to endure what this government has

done to government agencies, boards and commissions by way of the appointees and the way they've conducted business; i.e., OLG, eHealth.

I would like to make an apology, because my colleague opposite raised a point which, in retrospect, was inappropriate. I read 29 questions into the record verbally and orally. The individual listened to them, and I provided a written copy of the questions. I wish now, having listened to him, that the font was either larger or that it had been done in a more accessible manner.

But given the resources of the official opposition, given the fact that two of my caucus colleagues who do not sit on this committee provided questions to me as early as that morning, we did the best we could, given the circumstances of a super-agency being created by the Liberals under the dark of night. We felt that the questions that we asked, that we put forward, were reasonable.

We expect public appointees put forward by the McGuinty Liberals to come to committee with answers to show that they are qualified appointees. This is not the first time an appointee has come before this committee without the requisite qualifications. This is nothing against Mr. Gottheil; he is qualified to lead the Ontario Human Rights Tribunal. When his name was put forward as an Ontario Human Rights Tribunal chair, the official opposition did not bring Mr. Gottheil into committee because we felt he was qualified. Unfortunately, we do not feel that he is qualified here. In the member opposite's own words, "It is true he does not have experience in any of these clusters," and that is of major concern to us.

0910

This is not the first time in this committee that we have either been admonished in the official opposition or tried to be silenced by the government. It will not happen; please understand that. No matter how many written missives you deliver orally from the Premier's office or anyone else, we will not be deterred in our determination to ensure that governments, boards, agencies and commissions in the province of Ontario run effectively.

Thank you, Mr. Chair. I have no problems with how you deliberated last week. I will just suggest right now that we move on and vote. The official opposition will not be supporting this appointee.

The Chair (Mr. Ernie Hardeman): I just want to point out, if I could for a moment, that Mr. Brown had every opportunity to appeal the Chair's ruling last week. I want to point out that the ruling was made based on the standing orders, not on past practices of the committee. There is nothing in the standing orders that says that in fact the time is limited to the time that was set up for the hearing of the delegations. The standing orders are quite clear that you can ask for further information from the applicant in writing.

At this point in time, the Chair has ruled, and the member is allowed to take that ruling to the Speaker of the House if he so wishes, but presently it is not open for debate as to whether the Chair's ruling was proper. Thank you very much.

The member wanted to say more?

Mr. Michael A. Brown: I just wanted to say that Ms. MacLeod—

Ms. Lisa MacLeod: On a point of order, Mr. Chair: I think we've already exhausted where I stand and where you stand. At this point in time, we've got significant committee business. I would just propose we move on because—

Mr. Bruce Crozier: That's hardly a point of order.

Ms. Lisa MacLeod: Well, at the end of the day, if we're going to spend our entire committee time here when we have intended appointees—we've got report writing to do. We can go on at this all day.

The Chair (Mr. Ernie Hardeman): I would point out that the reason for the debate is to debate the concurrence motion. If the members wish to debate the process that the committee follows or the actions of one another, one might want to take a different time to do that. We do have a delegation coming forward that is waiting to be heard, and I think he has the right to be heard.

With that, Mr. Brown?

Mr. Michael A. Brown: Could I ask the Chair, is it your view or is it the ruling of the Chair that when a deferred vote comes before the committee, the only thing that comes before the committee is the vote, or is there discussion at that point?

The Chair (Mr. Ernie Hardeman): My understanding is there's discussion on the motion to defer. As in any other practice, you bring forward the motion, and any motion that's brought forward has the opportunity to have debate on the motion, as it would at any other time.

Mr. Bruce Crozier: On a point of order, Mr. Chair: Why does a deferred vote have to be moved a second time? It's already been moved. It's only been deferred. Why does it have to be moved a second time?

The Chair (Mr. Ernie Hardeman): It didn't.

Mr. Bruce Crozier: Well, you interrupted my colleague to have him move the motion again.

The Chair (Mr. Ernie Hardeman): My apologies for that.

Mr. Bruce Crozier: Okay.

Mr. Michael A. Brown: But I want to be clear, when a deferred vote is asked for, when the vote is deferred for seven days, when we come back to deal with that deferred vote, that's what we do? We just vote? There is no discussion on the matter before us? Is it just a deferral of the vote without discussion?

The Chair (Mr. Ernie Hardeman): I would just point out that the deferral was not for a deferred vote, as it would be in the House; it was a deferral of the determination. In fact, that would change the effects of the deferred vote. When it's a deferred vote in the House, it is just called and then, because it was previously voted on, all that's left to do is record it. This was not voted on in the previous meeting and so it is a reconsideration or a redoing of the total concurrence motion.

Mr. Michael A. Brown: So that I'm clear, just so that I understand, when there's a deferred vote called and we convene seven days later to deal with that matter, it is

appropriate at that time for the committee to discuss it before the vote is taken. Or is it just the vote that we will be taking? The vote is the determination and that is what we are interested in doing. I just want to understand this.

The Chair (Mr. Ernie Hardeman): For the record and for the benefit of the member, I will read it:

"At the conclusion of the meeting held to review an intended appointment, the committee shall determine whether or not it concurs in the intended appointment. Any member may request that the committee defer its termination to the next meeting of the committee, but in any event no later than seven calendar days. In its report, the committee shall state whether or not it concurs in the intended appointments and may state its reasons."

So, in fact, the ask for the deferral takes the whole action of the consideration to the next meeting.

Mr. Michael A. Brown: Does that mean, though, that it's just the vote or is there debate or discussion on the concurrence motion?

The Chair (Mr. Ernie Hardeman): In my opinion, there is.

Mr. Michael A. Brown: What? There is opportunity for debate and discussion? That's what you're—

The Chair (Mr. Ernie Hardeman): If the motion had not been made at the last meeting to defer it for seven days, we would have had the debate. We didn't have the debate because the whole issue was deferred to the next meeting. So everything that was not done would be done at this meeting, which would include the debate.

Mr. Michael A. Brown: So at this point we are to be debating or discussing, if the committee so wishes, the appropriateness of concurring with the appointment of—

The Chair (Mr. Ernie Hardeman): It was my opinion, Mr. Brown, that that's what we had been doing, and I was just asking if there was any further debate on this motion before we vote on the concurrence with this appointment.

Mr. Michael A. Brown: And so what I'm given to understand, then, is that the official opposition, having received the response from Mr. Gottheil, is totally happy with the response they received and don't wish to discuss the response to the questions that they provided.

The Chair (Mr. Ernie Hardeman): I would point out to the member, it's not his position to take positions on the opposition's position. The member spoke to issues that were well beyond the concurrence motion, and we accepted that as you have a right to say what you want to say, but you do not have a right to question other people's right to say the same thing.

With that, if there's no further debate, we'll call the question. All those in favour? Opposed? The motion is carried.

BEN SHAYAN

Review of intended appointment, selected by official opposition party: Ben Shayan, intended appointee as member, council of College of Dental Hygienists of Ontario.

The Chair (Mr. Ernie Hardeman): The second item this morning is a hearing on the appointment of Ben Shayan. We'll ask Ben to come forward. He's an intended appointee as a member of the council of College of Dental Hygienists of Ontario. If you would come forward. You will be given an opportunity to make a statement as to the appointment. We then will split the time for questioning. The total time allotted is a half an hour, 10 minutes for each party, and the time that the appointee uses to present his credentials will in fact be deducted, as is the practice, from the government's 10 minutes. With that, we will start the questioning, incidentally, with the government party when the questioning starts. With that, we welcome you, Mr. Shayan. The floor is yours.

0920

Mr. Ben Shayan: Good morning, ladies and gentlemen, and thank you for the opportunity of attending in this session.

I am a professional engineer with extensive background in project management. My skills are mainly delivering the work, decision-making and problem-solving while implementing the designs and ideas. I always participate in activities with the attitude of implementation and fulfillment.

In addition to my great interest in my profession, which I make my living off, I have always been interested, as extracurriculum, in being involved in other aspects and affairs of the society where I live that directly or indirectly will affect the well-being of myself, my family and people of the society. By saying that, today, in my opinion, there is no subject matter more important than health care, which is directly or indirectly affecting our lifestyles regardless of which phase of our lives we are in.

As a Canadian, I am very and truly proud of our universal health care system, which I consider a very advanced and humane system that not only provides health, well-being and peace of mind to fellow Canadians regardless of their wealth and financial status, but also makes Canada a role model for those countries that are willing be 21st-century societies and establishes one of the parameters of a real democracy, fulfilling the requirements of being civilized and becoming a caring society.

With this way of looking at health care in its entirety, I would like to consider myself someone who likes to contribute, gets involved and is part of standing guard on the system by looking into shortfalls and deficiencies and trying to have input towards good functioning and perfection. I am willing to have the experience of working with different disciplines of the health care system in order to see how they are related together and how a problem or well-being in one discipline affects or helps the other disciplines.

I am also a recipient of the five-year volunteer award from the government of Ontario.

Mr. Chair, at this time I conclude my short statement in order to be within time limits. I am ready to answer your questions. Thanks again.

The Chair (Mr. Ernie Hardeman): Thank you very much. I have about five minutes for the government. Questions?

Mr. Michael A. Brown: I'm just so pleased and the government is so pleased that you've put your name forward for this important position. You are eminently qualified and have served the province in other ways over the years, and we just wish to again say how delighted we are. We will be voting to concur with your appointment.

The Chair (Mr. Ernie Hardeman): Thank you. The official opposition?

Ms. Lisa MacLeod: Welcome to committee today. I hope things are well with you.

Mr. Ben Shayan: Thank you.

Ms. Lisa MacLeod: I'm wondering what motivated you to seek this appointment.

Mr. Ben Shayan: I think I explained in my short statement what motivates me. I'm interested in participating in all aspects of our society, and particularly in the health care system. Again, I explained why the health care system is important for me. That's why I would like to do this.

Ms. Lisa MacLeod: Do you have any experience in health care policy, health care legislation, dental policy or dental legislation? Do you have any experience whatsoever in the field?

Mr. Ben Shayan: I have served three years on the council of the College of Medical Laboratory Technologists of Ontario. Other than that experience, if we can call it experience, I have three daughters. All of them are studying—one in medicine, one in dentistry and one in pharmacy. By saying that, I have visited the faculties and I have toured the faculties, and I have talked and I have reviewed some things about dentistry while I was going through all of those procedures and interviews for my daughter when we were preparing her.

Ms. Lisa MacLeod: Have you ever spoken about this appointment to Reza Moridi?

Mr. Ben Shayan: No, I have not.

Ms. Lisa MacLeod: But it's true you've been a donor to him in the past and to the Liberal Party of Ontario?

Mr. Ben Shayan: If you're talking money-wise, no. I'm not a rich person that I can donate money.

Ms. Lisa MacLeod: So you didn't send \$193 in 2003—

Mr. Ben Shayan: But time-wise, yes. Time-wise, I have donated.

Ms. Lisa MacLeod: —2004, \$221; 2005, \$120; 2006, \$1,000; 2007, \$172? That's not you? Or is that you?

Mr. Ben Shayan: These mostly are membership fees that I am paying; \$10 or \$25 per month.

Ms. Lisa MacLeod: Wow, \$1,000 for a membership fee in the Liberal Party. That's impressive.

That's great, thank you very much.

The Chair (Mr. Ernie Hardeman): Thank you. Third party?

Mr. Howard Hampton: Can you tell me what a quasi-judicial body does?

Mr. Ben Shayan: Do you mean the colleges?

Mr. Howard Hampton: No, I mean a body that makes quasi-judicial decisions. What does that mean?

Mr. Ben Shayan: I'm sorry, this "quasi" word—since my English command is not good, I'm not very familiar with that one. Can you explain what "quasi" means?

Mr. Howard Hampton: One of the functions of the council of the college—it administers the college's affairs and regulates the profession. Some of its committees, in effect, perform a quasi-judicial function. Since you're presumably going to be appointed to this body, I wanted to know.

Mr. Ben Shayan: Actually, that college that I served, I was part of the discipline committee, and I was sitting in one hearing in which I was preparing the report and decision-making. That was referred to by the complaint committee. I don't know if I answered your question correctly.

Mr. Howard Hampton: In your introduction, you talked about how you look favourably upon our system of medicare and the health insurance system. Can you tell me, does the work that dental hygienists do fall within that system?

Mr. Ben Shayan: No, it doesn't.

Mr. Howard Hampton: I'm just puzzled why you would refer to the health insurance system when the work of this body and the work of dental hygienists falls completely outside of the OHIP system, the medicare system.

Mr. Ben Shayan: It's true that it's not part of the OHIP system, but it's part of the regulated health providers act. I'm not looking into only those sections of health care that are covered by the health care system; I'm looking to all disciplines that affect people's well-being. Personally, I think that if we are developed far enough, we can include dentistry and hygienists and all of these things to our health care system. That would be ideal—provided that budgetary or monetary abilities allow us.

Mr. Howard Hampton: But you recognize that we're dealing with two completely different things there.

Mr. Ben Shayan: That's correct.

Mr. Howard Hampton: No further questions.

The Chair (Mr. Ernie Hardeman): Thank you. And with that, that concludes the time—I was going to say that concludes the time allocated, but obviously there were fewer questions than time allowed. But that does conclude the interview. We thank you very much for coming forward and offering your services to the province.

Mr. Ben Shayan: Thank you, Mr. Chair.

The Chair (Mr. Ernie Hardeman): That concludes the hearings this morning, so we'll consider the intended appointment of Ben Shayan, an intended appointee as a member of the council of the College of Dental Hygienists of Ontario.

Mr. Bruce Crozier: Chair?

The Chair (Mr. Ernie Hardeman): Yes?

Mr. Bruce Crozier: I just wanted to point out, because of the line of questioning, that between nine and 11

public members—i.e., laypersons—are appointed by the Lieutenant Governor. I would consider this gentleman, as a layperson, eminently qualified.

The Chair (Mr. Ernie Hardeman): Again, we need a motion to concur before we have a debate.

Mr. Bruce Crozier: That wasn't a debate.

Mr. Michael A. Brown: I move concurrence of the appointment of Ben Shayan as a member of the council of the College of Dental Hygienists of Ontario.

The Chair (Mr. Ernie Hardeman): Thank you very much. Any discussion?

Ms. Lisa MacLeod: Can we defer?

The Chair (Mr. Ernie Hardeman): Okay, the vote is deferred.

That concludes our business on the appointments and we'll now proceed to the meeting in a closed session for the purpose of report writing.

The committee continued in closed session at 0934

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Mardi 3 novembre 2009

Standing Committee on Government Agencies

Intended appointments

Comité permanent des organismes gouvernementaux

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 3 November 2009

Mardi 3 novembre 2009

The committee met at 0902 in committee room 1.

INTENDED APPOINTMENTS

BEN SHAYAN

Review of intended appointment, selected by official opposition party: Ben Shayan, intended appointee as member, council of College of Dental Hygienists of Ontario.

The Chair (Mr. Ernie Hardeman): Good morning. I will call the meeting of the government agencies committee to order. Thank you all for being here.

The first item on the agenda this morning is dealing with the concurrence that was deferred a week ago today, the appointment of Ben Shayan as a member of council of the College of Dental Hygienists of Ontario. The concurrence in the appointment was previously moved by Mr. Brown at the last meeting. There was a request for deferral of the consideration for a week, and that motion is now before us, the motion to concur with the appointment.

Any discussion on the motion?

Mr. Michael A. Brown: Recorded vote.

Ayes

Albanese, Brown, Johnson, Naqvi, Pendergast.

Nays

McLeod.

The Chair (Mr. Ernie Hardeman): The motion is carried.

SUBCOMMITTEE REPORT

The Chair (Mr. Ernie Hardeman): Our next order of business is the report of the subcommittee of Thursday, October 29. Motion to accept the report?

Mr. Michael A. Brown: So moved.

The Chair (Mr. Ernie Hardeman): The motion has been moved. Any discussion on the report? If not, all those in favour? Opposed? The motion is carried.

INTENDED APPOINTMENTS

MICHÈLE LABROSSE

Review of intended appointment, selected by official opposition party: Michèle Labrosse, intended appointee as member, Ontario Review Board.

The Chair (Mr. Ernie Hardeman): We will now proceed with today's appointments. Our first interview today is Michèle Labrosse, intended appointee as a member of the Ontario Review Board. I hope I said the name somewhat—

Ms. Michèle Labrosse: It's Labrosse, thank you.

The Chair (Mr. Ernie Hardeman): Thank you. We thank you very much for coming in for this brief interview this morning. We have a half an hour scheduled for the interview, the time for which will be divided equally among the three parties present. We will start with an opening statement, if you wish to make one. Any time used for that opening statement would be taken from the government time allotment. Any time that's left will be taken up by the government side. We will start the questioning, upon the completion of your statement, with the official opposition.

So with that, good morning, and the floor is yours.

Ms. Michèle Labrosse: Thank you, Mr. Chair, members of the committee. Je vous remercie pour cette occasion de comparaître devant vous ce matin.

Thank you for the opportunity of appearing before you this morning, and let me begin by saying that I appreciate and respect the *raison d'être* and work of this committee. I'm pleased to appear before you this morning in relation to my intended appointment as a legal member of the Ontario Review Board.

I've been a practising lawyer in the province of Ontario for almost 17 years, specifically in the area of family law. In addition to appearing extensively before the various courts in this province, I've also received training in the areas of family mediation and collaborative family law.

Though my first language is French, I am fully bilingual and I operate a fully bilingual practice. For the first 10 years of my practice, I concentrated heavily in the area of child protection law, and it was during those years that I was first exposed to the legal and social issues surrounding mental health disorders. Many of the parents and children involved with the child protection system suffer from mental health problems. As an advocate for

both parents and children, one must become well acquainted with the nature of these issues, as well as available treatment.

In addition, I served as a member of the board of the Centre psychosocial pour enfants et familles d'Ottawa, a non-profit organization which offers mental health services to the francophone population of Ottawa. My tenure on this board provided me with a unique opportunity to learn about the delivery of mental health services in Ontario.

I consider my work as a family law lawyer to be very multidisciplinary in nature. In order to provide effective legal services, I'm required to seek and acquire knowledge in a number of different areas. One day, I'm called upon to understand complex tax or accounting issues and the next day I'm required to understand the nature of a dissociative disorder or the effects of psychotropic medication. At a time when my practice focused more heavily on custody disputes, I had the opportunity to work closely with psychologists and psychiatrists and their custody assessment reports, and also having the opportunity of examining them and cross-examining them in court. In my family law practice, mental health issues, mental health disorders and their potentially devastating consequences if left untreated have required me to inform myself and gain a good understanding of them.

Though there is not a day when I don't find my work challenging, I believe that I am ready to complement my practice with a new and different challenge. The adjudicative function of the Ontario Review Board, its federally mandated status and its subject matter are all aspects that make me believe that my work and general life experience are well suited for.

I became acquainted with the Ontario Review Board in a distant manner from time to time throughout my years of practice. However, I've become better acquainted with it through my father, who is a retired judge and currently a part-time member, though he no longer sits as an alternate chair. He is in charge of pre-hearings and only occasionally sits as a legal member because of the shortage of bilingual legal members in Ottawa. It was at his encouragement that I submitted my application to become a legal member.

I am not an expert in psychology or psychiatry. The board is already well staffed with those. I believe that as a legal member, if appointed, I would bring to the board my considerable experience with our system of justice, my extensive work with separating spouses and their families, and child protection, all of which has allowed me to gain a good understanding of the intersection between society, mental health issues and our system of justice.

In addition, my inherently fair and balanced approach to my work would, I believe, lead me to strive towards finding the balance between the rights of individuals and the need to ensure the safety of the public and protection of our communities.

As an intended appointee of the Ontario Review Board, it would be my intention to take on the respon-

sibilities of a legal member with the same degree of commitment, dedication and professionalism that I have strived to uphold in my 17 years as a practising lawyer.

Thank you for this opportunity. At this time, I would be pleased to answer your questions.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. We will go with the official opposition.

Ms. Lisa MacLeod: Bonjour.

Ms. Michèle Labrosse: Bonjour.

Ms. Lisa MacLeod: Madame Labrosse, bienvenue au comité. You seem eminently qualified for this, so my colleague and I are wondering how one of our colleagues actually wanted to call you. My colleague has a few questions for you, but we will be supporting your nomination.

Ms. Michèle Labrosse: Thank you.

0910

Mr. Jim Wilson: I really don't have too many questions, either. I think you're well qualified. I'm very familiar, as a former Minister of Health, with this board and appointed a number of people to it in the past.

I guess the only thing that disturbed me—I had a first cousin murdered in Cobourg in 1974, and every year that fellow gets to go before the board. It was one of the old Lieutenant Governor warrants. What do they call that now? I forget. Do you have any thoughts about that? It often seemed to me that if my uncle didn't intervene and if the Toronto Star hadn't kept track of this guy for the last 30 years, he would have been let out on several occasions. In fact, he was let out and reoffended, because of weak board members, frankly, and what seemed to be a mentality among the leadership at Penetanguishene mental health hospital to side with the crazies. Do you have any thoughts about some of these things? It's pretty general, I know.

Ms. Michèle Labrosse: It's my understanding that these situations are reviewed annually, and it certainly seems to provide an opportunity for situations such as the one you're referring to to be looked at seriously by a board, which, as you know, is comprised of at least five members—psychiatrists, legal members, chairs. So it certainly seems to me that there is more accountability under this system than there would have been under the old system, perhaps, with the warrant that really was very indefinite in nature and certainly didn't have the same process attached to it. It would seem to me that this structure and this process provide better safeguards against situations like that.

Mr. Jim Wilson: My point, then, is that he gets to go on trial every year and Michelle Keogh is permanently dead. I often asked appointees before I appointed them myself how they felt in this area, because, to me, it should be every five years or something. The fact that we spend millions and millions giving these people an annual review when they're clearly crazy—every time he shows up he says he's going to reoffend, and sometimes they don't believe him, and they let him out on one occasion. That's all.

The Chair (Mr. Ernie Hardeman): Third party?

Mr. Howard Hampton: I'm sorry, I wasn't here for all of your statement. You're currently practising law?

Ms. Michèle Labrosse: That's correct.

Mr. Howard Hampton: In Ottawa?

Ms. Michèle Labrosse: Yes.

Mr. Howard Hampton: What kind of law?

Ms. Michèle Labrosse: Family law.

Mr. Howard Hampton: It's your intention to continue your practice full-time?

Ms. Michèle Labrosse: Yes.

Mr. Howard Hampton: You're aware of the caseload that this board has in terms of the number of hearings?

Ms. Michèle Labrosse: I am.

Mr. Howard Hampton: You're not concerned about your capacity to carry on a law practice and sit on this board as well?

Ms. Michèle Labrosse: No. I look forward to it, in fact.

Mr. Howard Hampton: My understanding is that working on the board is going to require a fair bit of travel. Were you told that?

Ms. Michèle Labrosse: I think it's possible. I understand that perhaps in my case it's less likely because of the demand for bilingual members in Ottawa, but I am certainly prepared for the possibility and the likelihood that there will be some travel.

Mr. Howard Hampton: The reality is, you also need bilingual members in Timmins, in North Bay, in Sudbury, in Sault Ste. Marie, in Mississauga, in Welland-Thorold, in Windsor, which is why I asked the question. Are you prepared for the travel aspect?

Ms. Michèle Labrosse: Absolutely, yes.

Mr. Howard Hampton: Do you think you can do the work on the board, meet the travel requirements and still carry on your law practice?

Ms. Michèle Labrosse: Yes, I do.

Mr. Howard Hampton: Good luck to you.

Ms. Michèle Labrosse: Thank you.

The Chair (Mr. Ernie Hardeman): The government, you have about five minutes.

Mr. Michael A. Brown: Thank you for putting your name forward. Your qualifications are eminent. We believe that putting your name forward will assist this tribunal in going forward, so thank you very much. We appreciate your work and, in advance, appreciate your service.

Ms. Michèle Labrosse: Thank you.

The Chair (Mr. Ernie Hardeman): That concludes the interview. Obviously, you've expressed yourself so well in your opening remarks that, in fact, there were not enough questions to fill all the time. We appreciate your attendance here today, and we wish you well as you proceed with this endeavour. Thank you very much.

Ms. Michèle Labrosse: Thank you for this opportunity.

The Chair (Mr. Ernie Hardeman): We are slightly ahead of schedule. It appears that the next invitee is not

yet in the room, so we're checking now. We may have to recess until the time arrives for her appointment.

With that, we will recess until the time arrives for the next appointment. Hopefully, she will then be here. With that, we'll take a break, have a coffee and a little chat.

The committee recessed from 0915 to 0919.

LALITHA ANANTH

Review of intended appointment, selected by official opposition party: Lalitha Ananth, intended appointee as member, Board of Funeral Services.

The Chair (Mr. Ernie Hardeman): We'll call the committee back to order. I believe Ms. Ananth has arrived. Thank you very much. We realize it's starting just slightly ahead of the scheduled time for your appointment, but the last one didn't last quite as long as time would have allowed, so we will carry on with your appointment. Ms. Ananth is intended appointee as member, Board of Funeral Services.

We will give you an opportunity to make a presentation to the committee as to your qualifications and your reasons for your involvement. Then we will divide the time equally, 10 minutes for each party. The time that you take for your presentation will be taken off the government side. We will begin the questioning upon completion of your presentation with the third party.

With that, thank you very much for joining us this morning. You may make your presentation.

Ms. Lalitha Ananth: Good morning. I would like to thank all of you for giving me this opportunity to appear before you in connection with my intended appointment to the funeral services board.

I am self-employed; I run a small business offering bookkeeping, tax services and mortgages to individuals and small businesses. My interaction with my clients has strengthened my knowledge, analytical skills and professionalism. I'm also involved with the Hindu community of Hamilton and region through a local temple. I volunteer there and help new immigrants and Canadians who have a problem with the English language to integrate easily with the community.

0920

One of the areas where they need help is to coordinate with funeral homes for funeral arrangements for their loved ones. I do not know if all of you are aware, but Hinduism does not allow performing the last rites for the deceased person inside of the temple. Therefore, we have to arrange this in a funeral home. While trying to help these people, I've always wanted to get more involved so that I have can have first-hand knowledge about the way funeral homes operate and the rules governing them so I will be better equipped to help these people. This made me look into various websites to see how I can get involved. I noticed that the funeral services board had public members and I applied online. If selected, I will work hard to serve my community and the public in a way that will make a difference.

Thank you once again for giving me the opportunity.

The Chair (Mr. Ernie Hardeman): Thank you very much for the presentation. With that, we will start with the third party. Mr. Hampton?

Mr. Howard Hampton: I have a very basic question. Maybe you can elaborate on this. Why did you apply for this board?

Ms. Lalitha Ananth: As I told you, I've been greatly involved with the Hindu community, trying to arrange funerals. We have a unique way that we cannot do the funeral services in the temple, and the last rites have to be done elsewhere. Most people, new immigrants especially, have financial constraints and they really don't know how to go about the whole thing, so we sort of help them to do that. We get the priest from the temple to go, and in trying to find that—we always have problems with people trying to understand what we want to do because our rites are totally different. I wanted to see what I can do to get involved, to know better. They wanted someone from the temple to be involved in the funeral services board, and no one was really willing. So just to know something, I applied, thinking that by knowing more, I'll be able to do something for these people.

Mr. Howard Hampton: When you say they wanted someone from the temple to apply, whom are you referring to?

Ms. Lalitha Ananth: Anyone from the community. There are a few of us who are volunteers, who have a good knowledge—the language is also a problem, so we have to have somebody who can coordinate very well with them. There were members of the board in the temple, and we gave the option, and nobody seemed to be really interested. So I applied to see if I can help them better, because I really don't know the rules that well. I went to the website. I always used to read to see what we could do, and I thought that maybe this way it will help them better. But that's the most important place where they need help.

Mr. Howard Hampton: Just so I'm clear: When you refer to "they," you mean—

Ms. Lalitha Ananth: The board members of the temple.

Mr. Howard Hampton: Of the temple.

Ms. Lalitha Ananth: Yes, and the volunteers who come and help out at the temple too. We tried to select somebody and—

Mr. Howard Hampton: And it came back to you.

Ms. Lalitha Ananth: Yes.

Mr. Howard Hampton: All right. Do you know that there is a fair bit of legislation involved in terms of this board and the decisions that it makes etc.?

Ms. Lalitha Ananth: Yes. I've gone through the website and I've tried to read as much as possible to familiarize myself with all the regulations and stuff like that.

Mr. Howard Hampton: Okay. And you understand the responsibilities of a board member? The work is—there's more than one aspect to this.

Ms. Lalitha Ananth: Yes.

Mr. Howard Hampton: Okay. Could you describe to me, given that there's more than one aspect to this board, what you think will be the most important aspect for you?

Ms. Lalitha Ananth: For me the most important aspect, I believe—I really don't know—just to coordinate things. This funeral service—do you want to know pertaining to the Hindu community or generally? Pertaining to the Hindu community? I want to go into the regulations to see what will suit these people better so that they can make their plans better. I'm not on the board; I've just gone and read that the board is responsible for all the regulations and for the licensing of the funeral board and all those things. I just feel that it would be easier for me to regulate, for example, when we go to the funeral board. First of all I have to explain everything to them—right?—what we want them to do that they are not totally aware of. I'm just thinking that if we could do something so that these people can do something at a lower cost. That is what is my main concern: within the regulation, whatever I could do to make this simpler and cost-effective for them. Now when they get a priest from outside, they pay extra and all these things. Even if that is possible, how to make it very simple for them, that is my main concern, and that's why I'm there. But I'm willing to work within the regulations and try my best to do what I can.

Mr. Howard Hampton: Okay. Thank you.

The Chair (Mr. Ernie Hardeman): Thank you. To the government.

Ms. Leeanna Pendergast: Thank you, Chair. Good morning.

Ms. Lalitha Ananth: Good morning.

Ms. Leeanna Pendergast: Tell me how you pronounce your first name?

Ms. Lalitha Ananth: Lalitha.

Ms. Leeanna Pendergast: Lalitha—beautiful.

The board mediates conflict and has that side of it. This morning I'm most interested in something you said in your opening statement. You said you will help the board to become better equipped to help grieving families. I'm interested, this morning, in having you articulate for this committee what skills you bring with you from your volunteer work in your community. Obviously, you have a background in math and skills in accounting, but talk about that other side of you, those human skills that you bring to this board, please.

Ms. Lalitha Ananth: Okay. I have a very diverse—I know the diversity in our community. I'm aware of all the different backgrounds. Our temple in Hamilton got burned down after the September 11 attacks. We have now a plan. We have a lot of interfaith programs in the temple to educate people about different religious backgrounds and stuff like that. I'm quite aware of how ours is different from the other religions and stuff like that. So I think I'll be able to sort of understand the diversity in the different religions and the different practices better, and that might help me to work better within the

regulation, to help the board in whatever. I can bring that part of my experience.

We have really focused on this interfaith right now, because of the burning down of our temple because they thought it was a mosque. We haven't found the people yet who burned the temple. After that, we became more interfaith, so I have a lot of experience about other religions and other cultures. I think that will be a great asset to what I bring to the board.

Ms. Leeanna Pendergast: Thank you.

The Chair (Mr. Ernie Hardeman): Mr. Naqvi.

Mr. Yasir Naqvi: Thank you very much, Ms. Ananth, for coming before the board. I think you've hit on most of the issues that are important. Ontario is far more diverse as a province than it has ever been before. When it comes to funerals, these are moments of significant grief but, of course, respect as well to the person who has passed away, to make sure that their wishes are fully met based on their faith.

Can you speak a little bit about your background in the Hindu community, your involvement with funeral services within the Hindu community and how you think that you'll be able to assist in bringing those diverse values within the board to make sure that our regulations and rules are not just specific to the Judeo-Christian traditions of our province—which are important, of course—but to other faiths as well, be it Hinduism and others in the province?

Ms. Lalitha Ananth: The thing is, Hinduism—I can speak a little bit about Hinduism. There are lots of things that people just follow. We have to separate two things. People just follow because it has been a tradition for a long time, and then we have to educate the people, too, about certain things that we shouldn't be doing; for example, the ashes. They put all the stuff in the water. There is lots of stuff along with the ashes. There had been a problem earlier with pollution and stuff. It's difficult to tell them not to do things, because we have stuff like this in the temple too. They want to put all the stuff on the deities, and it blocks things and that.

I think we have to educate the public first. Then the board also—I will tell the board what is the significance of certain things and what we can do to make it easier for the people to understand the two things: the actual culture, what they have to do; and what they should not be doing.

0930

I don't know if that's answering your question. That's the only thing I see as pertaining to the Hindu culture. There's lots of stuff that we teach them not to do, but most people think it's there in the religious books and they have to do it, otherwise their loved ones will not go to heaven or whatever they believe in, but sometimes that does cause problems even in our temple. We are trying to educate the people first, and then I think maybe my expedience there will help me help the board sort of understand—I mean, to bring a medium between the two, right?—what the regulations are and what they believe they should do.

We are trying to work around that even in the temple, trying to educate our people coming there, telling them that we can do something different which will have the same effect, because they strongly believe in those values.

Mr. Yasir Naqvi: While the dignity is maintained of the faith and of the person who's deceased.

Ms. Lalitha Ananth: Yes, exactly.

Mr. Yasir Naqvi: Thank you very much for taking the time. We sincerely appreciate it.

The Chair (Mr. Ernie Hardeman): Thank you very much. Official opposition, Ms. MacLeod.

Ms. Lisa MacLeod: Thank you very much, Mrs. Ananth. It was a really great presentation that you did. When we see somebody with such strong Liberal connections as a donor and organizer, it generally raises a red flag, and that's why you're in today. But having listened to you and your genuine concern for your community, we have no problem supporting your appointment today and your nomination. You're obviously very qualified.

I guess the question that I'm left with is, is there any particular committee or team that you feel that you'd like to be part of? Because you came in here very well prepared, understanding the funeral industry in this province and how it impacts your community and your religion, and that's very valuable, as Mr. Naqvi said. I guess the question is, once you're appointed, how do you intend to make the most of this?

Ms. Lalitha Ananth: I will work in any way—whatever way the board wants me to, but I would prefer to be more involved in the regulation part because I can give ideas about our community services and stuff, trying to do that, but I am willing to work in any capacity, in any way the board wants me and they see me fit. But I would like to have a little bit of say in the regulation. If they're making changes or anything like that, I would like to be a bit involved because that is the exact place where we have a problem with dealing with these funerals in our temple.

Ms. Lisa MacLeod: Great. And just to pick up on my colleague Mr. Hampton, he mentioned that there are a lot of regulations and legislation that you'll be responsible for here in the province. One of the big issues that's affecting the funeral industry right now is the upcoming and impending imposition of the harmonized sales tax. I'm just wondering if you have any thoughts right now on the funeral industry and how it's going to be impacted, because certainly we're hearing from that industry that that's a critical concern for the bereaved.

Ms. Lalitha Ananth: Yes, but I haven't given too much thought to that aspect and I haven't read a lot—all I know is that will affect the pricing. Of course it'll cost more, but other than that I really haven't done a lot of reading or anything about how much or specific numbers as to how much it'll increase, or anything like that. So I'm not really in a position to give you too much information about that because I didn't read too much. I know they said that after July 1, anything it's going to

affect—but really I don't know how much and I didn't really go into that.

Ms. Lisa MacLeod: It's something for you to look to. I won't keep you much longer. Mr. Wilson, my colleague, has a question for you. Thank you.

Ms. Lalitha Ananth: Thank you.

Mr. Jim Wilson: Yes, thanks. I thought Mr. Brown might have asked you more questions, given his expertise in this area.

I just buried a couple of family members, my mom and dad, in the last year, and one thing that strikes me is how vulnerable people seeking funeral services are in terms of price or the lack of information there is out there with regard to price. It's pretty hard to shop around, especially in a small town.

Ms. Lalitha Ananth: I know.

Mr. Jim Wilson: So I was wondering if you could give any thought—and you don't have to really answer this today, but take it with you when you are on the board—to some sort of guidance out there for consumers or information out there for consumers of what an average funeral should cost. The only figure you ever hear is when you see an insurance commercial on television, for goodness sake, that tells you the average funeral in Canada is \$13,000 or whatever. I found with just my own research that prices varied dramatically in the industry, and you really don't know.

I'll use my own riding: In parts of my riding it's \$600 to pick up the body, in another part it's \$1,800 to pick up the body, and sometimes the body's only going—in the case of my father, it was going about 50 yards. I made the joke that I should have wheeled him over in the middle of the night and saved \$600, and he would have appreciated that, actually—wouldn't have minded at all. Anyway, just take that with you. I think that they need to be a little bit more transparent and a little bit more competitive out there in terms of—

Ms. Lalitha Ananth: I appreciate that, because that's the main concern we have—they don't have too much money and we're trying to work with very—we have a crematorium there; we just take the body, do the last rites there and do the cremation right away. That's all we can do for them because they don't have a lot of money to spend, so that's—

Mr. Jim Wilson: As you know, the board has an education committee, so I think all of your concerns would be—not only on the regulatory side, but you'd be well to try and get yourself on that committee, I would think. Thank you.

Ms. Lalitha Ananth: Thank you.

The Chair (Mr. Ernie Hardeman): Thank you very much for coming out this morning and making the

presentation; we appreciate that. Since the question time is over, thank you very much for being here and you can take your leave and you can be out of here, even before you anticipated. We wish you well in your future endeavours.

For the committee, that concludes all the people to interview, so we will now proceed with the concurrences. We will consider the intended appointment of Michèle Labrosse, intended appointee as a member of the Ontario Review Board. We need a motion to deal with that one.

Mr. Yasir Naqvi: I move that we appoint Michèle Labrosse as a member of the Ontario Review Board.

The Chair (Mr. Ernie Hardeman): “We concur” with the appointment.

Interjections.

The Chair (Mr. Ernie Hardeman): Okay. Any discussion?

Ms. Lisa MacLeod: Recorded vote.

Ayes

Albanese, Brown, Hampton, Johnson, MacLeod, Naqvi, Pendergast, Wilson.

The Chair (Mr. Ernie Hardeman): Seeing no opposed, the motion's carried.

Our next move is to consider the appointment of Lalitha Ananth, intended appointee as a member of the Board of Funeral Services. Can I have a motion?

Ms. Leeanna Pendergast: I put forward a motion that Lalitha Ananth be appointed as a member of the Board of Funeral Services.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Discussion?

Ms. Lisa MacLeod: Recorded vote.

The Chair (Mr. Ernie Hardeman): No further discussion?

Ayes

Albanese, Brown, Hampton, Johnson, MacLeod, Naqvi, Pendergast, Wilson.

The Chair (Mr. Ernie Hardeman): Seeing no opposed, I declared the motion carried.

With that, that concludes the appointments and the business on today's agenda. The meeting will adjourn to Tuesday, November 17, in committee room 1, when again we will be conducting more appointments. Thank you very much for being here this morning.

The committee adjourned at 0939.

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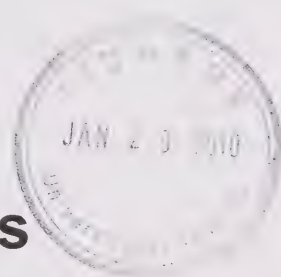
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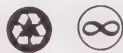
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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 17 November 2009

Mardi 17 novembre 2009

The committee met at 0905 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr. Ernie Hardeman): We'll call the Standing Committee on Government Agencies to order.

The first item of business is the subcommittee report of Thursday, November 5. Do I have a motion to adopt the report?

Mr. Michael A. Brown: So moved.

The Chair (Mr. Ernie Hardeman): Any discussion? If not, all those in favour? Opposed? The motion is carried.

INTENDED APPOINTMENTS

ROBERT PRICHARD

Review of intended appointment, selected by third party: Robert Prichard, intended appointee as member and chair, Metrolinx.

The Chair (Mr. Ernie Hardeman): We're meeting this morning to do three intended appointment reviews. The first one is already sitting at the end of the table, anxious to get started. We have Robert Prichard; he's an intended appointment as member and chair of Metrolinx.

I would just point out that the process per individual will be half an hour, with 10 minutes for each party. We will start with the opening statement from you, Mr. Prichard. Any time that you take up to 10 minutes will come off of the government side of the questioning. We will do the questioning upon the completion of your presentation. With that, we turn the floor over to you and say: Welcome. We look forward to your presentation.

Mr. Robert Prichard: Thank you very much, Chairman. It's an honour to be here.

Metrolinx has been assigned an important role in the growth and prosperity of the greater Toronto and Hamilton area and, indeed, the province as a whole. I'm honoured to be invited to play a role in Metrolinx's work.

I served from mid-April to early May as the transition adviser, as the merger of Metrolinx and GO Transit was contemplated. Following the passage of the legislation merging the two organizations and creating the new Metrolinx, I began service as president and chief executive officer, which I've done since May 13, or the last six months.

As the merger is completed and the organization is fully formed in the new year, our plan is to recruit a

permanent president and chief executive officer for the organization to replace me, at which point the plan is that I would go from being the president to becoming the non-executive chairman once the new president is in place. We hope that process will lead to a seamless transition from the transitional arrangements to the permanent arrangements and that all the commitments we're making to our municipal and transit partners will be honoured by my having a continuing role with the organization.

The merger, I think, has gone well. The legislation was approved in mid-May. It combined the old operating organization, GO Transit, with the policy and planning agency, the old Metrolinx, creating an integrated agency with a single management structure and an integrated mandate, going all the way from operations through to construction to planning and policy for the GTHA.

I think we've made good progress over the last six months. We're working on our top priorities. Our top priorities include improved customer service for GO Transit riders: We're working on expanding GO Transit and improving the quality of service and the reliability of service and having a focus on the rider, on the customer, in all we do.

Our second priority is to work on the major new infrastructure projects that have been announced, the so-called "Big 5" projects—four in Toronto and one in York region. Our goal is to deliver those projects on time and on budget. They're a very, very large set of projects, but we're making good progress working with the TTC, in the case of the Toronto projects, and with York Viva, in the case of York region.

Our third priority has been to work to successfully integrate the two organizations into a single organization. That work has gone well, including building the new governance for the agency with a new board of directors.

Fourth, we've begun work on our investment strategy, which is, we are obliged under the statute, as you know, to report by the end of June 2013 with a recommended investment strategy to sustain this work beyond the initial funding that has already been committed, and we've begun early work on that.

Fifth, we have announced a study of the question of electrification of the GO system and have that work well-launched.

In terms of the governance of the new organization, from my perspective, it is working well. We have, in my

view, an excellent board of directors that has been nominated. We're trying to put in place exemplary governance arrangements for the organization. We have the advantage of a clean slate, and so we can put in place what should be best-of-class governance arrangements. We are being blessed so far by essentially 100% attendance of all board members at all board and committee meetings over the first six months, which has been excellent.

0910

I was told that I should also say a word or two about my own qualifications. I'll be brief on that because that's for you to judge rather than me.

I have had the privilege of leadership positions in both the public sector, as president of the University of Toronto for a decade, and in the private sector, as the president and chief executive officer at Torstar. I've had a strong interest in public policy and public administration as a teacher, as a scholar and then as a practitioner in the field during my career.

I've had the special privilege of working on a non-partisan basis in the province, holding appointments from the Peterson government, the Rae government, the Harris government and now the McGuinty government, and I'm proud of that service across all political parties since 1985. I view public service as the highest calling, and I'm just delighted to have the opportunity to continue to serve through working at Metrolinx.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. We will start the questioning with the government.

Mr. Michael A. Brown: We're delighted to have you here leading this very important new venture, as we amalgamate the transportation system. We are very happy to have people—not just you, but people across the board—who are going to provide good services to the people of Ontario. We will be supporting your appointment.

Mr. Robert Prichard: Thank you very much.

The Chair (Mr. Ernie Hardeman): I guess I should have mentioned how much time you have left, but obviously that wasn't necessary. It makes up for the fact that I also was supposed to tell you before the interview started that we would be starting the questions on the government side. So, my apologies for that.

With that, we'll go to the official opposition.

Mr. Jim Wilson: Mr. Prichard, it's great to see you again. Thank you for appearing before the committee, and thank you for stepping down at Torstar. Now we can resume our friendship again. I always enjoyed working with you in my various roles and your various roles.

I'm not the transportation critic for my party, but Mr. Klees is, and he's unable to be here this morning, so he has given me some questions.

I don't live in the area in which Metrolinx has jurisdiction. I live in Wasaga Beach, Simcoe county. But from an outsider's point of view, and being a member of this place for many years—in your opinion, what's Metrolinx going to do that all the boards before it

couldn't do in terms of integrating the services for public transit riders? And what were some of the problems in the past that you think you can overcome?

Mr. Robert Prichard: Thank you for your introductory comments. It's good to see a University of Toronto graduate do so well in the Legislature.

I think we have a good shot. We've been given a strong statutory mandate. We've been given exceptional financial support. We have the basis of having very strong relations with our municipal and municipal transit partners. We have some tools to assist with integration. The Presto fare card, which will be a common fare card across all the transit systems, should give us real opportunities for improved service for riders regardless of what municipal boundary they're going across. We've been given tools that should allow us to make real progress.

Second, I think there's a growing recognition that the challenge of transit is a regional challenge. It is not just in each of the municipalities; it is for the region as a whole, and I think that recognition has become widespread. We've got a regional transportation plan to serve the region and we've been given the tools to get at that. It will require a high degree of co-operation between us and each of the municipalities within the region and their transit systems. We don't have a "command and control" relationship. It's a relationship of partners working collectively to realize the promise of the big move planned for the region. It's not without challenge to more fully realize the possibilities, but I think we've never had as strong a set of tools and as strong a statutory mandate to try to deliver seamless, integrated transit and transportation options for people throughout the region.

Mr. Jim Wilson: You do mention, though, that moral suasion is still very much one of your tools in getting the partners to pull on the oars in the same direction.

Mr. Robert Prichard: I think moral suasion is an essential part of relationships among municipalities within the region—their transit systems—but we have more than just moral suasion, because we have tools like the Presto fare card, which, by harnessing the best of technology, will simply make it easier for everybody concerned to come together. I think barriers are coming down that will make the role of relationships and moral suasion among us more successful than it might have been in the past.

Mr. Jim Wilson: From a consumer point of view, there's obviously a lot of interest in a unified fare system and the card. Do you want to comment further on where you're at with that?

Mr. Robert Prichard: The fare card is called the Presto card. It is an electronic card whereby people, when they're going on any of the transit systems, will be able to tap and go on. It will be a card they can load with value themselves—they will be able to do that in multiple ways—and it will charge them the lowest fare appropriate to them in the circumstances. That's the smart card. So if the person has taken a certain number of trips in the month on GO, the price of their trip comes down to

an equivalent of the monthly pass. It's a smart card that will make it easier for people to get on and off, to use transit, to come in on the GO train, get off the GO train at Union Station and use the same card to get on the subway. That card will allow people throughout the region to use a single card and be charged the appropriate fare and the lowest fare applicable to them in light of their travel pattern.

Mr. Jim Wilson: Where are you with the implementation?

Mr. Robert Prichard: We're going to do the first rollout on the last day of November. This year is the first rollout. It's a trial combining GO and TTC, with 500 people to test the system. The system is going live on November 30. If that goes well, we begin the rollout through 2010-11, and it should be fully rolled out by 2012 for GO. The rollout also depends, of course, on the participation of our municipal partners, and we're working closely with them to make sure their rollout fits well with the whole system.

Mr. Jim Wilson: Are there kiosks where people can get the cards?

Mr. Robert Prichard: There will be kiosks, there will be machines in all the stations where people will be able to obtain the cards, and then they will be able to load the cards at those locations or at a distance, directly from their bank balances.

Mr. Jim Wilson: On the Big Move, do you have any preliminary thoughts? I know you have until the middle of 2013 to present the government with a financing plan. Do you have any thoughts on how this approximately \$50-billion project is going to be paid for?

Mr. Robert Prichard: The financial challenge is significant. The Big Move contemplates capital investments over the life of the plan, which is to 2031. It contemplates capital investments of about \$50 billion, of which the first \$10 billion has been funded to give us a kick-start and show results, but there's still \$40 billion to go. The second issue is that there will be ongoing operating costs associated with this additional infrastructure as it's built, and those need to be met as well.

In terms of developing an investment strategy, the work we've sought the board's permission to initiate and were given approval for yesterday at our board meeting is to begin the analytical work of framing the problem properly—what are the capital costs; what are the operating costs?—and to begin to frame the problem and what the options are, both drawing on the best expertise in the region and looking at international experience.

I think Metrolinx should be part of that discussion and become a centre of expertise on the issues that face us. If we can spend the next period of time getting the problem properly framed, I think that's the first step in what is a four-year process of trying to come to an investment strategy. It's far too early to have a view as to what the answers would be, but I think we can play a very constructive role, over the next year or so, in beginning to identify clearly and crisply what the questions are and what some of the choices would be. We're then going to

need a significant process of public engagement and public dialogue to permit a full debate on what these choices would be.

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Mr. Jim Wilson: But during those four years, you will spend the \$10 billion you have now to do what capital projects you have on the wish list?

Mr. Robert Prichard: Yes, the first \$10 billion has been committed to these projects by the province. We will build out these projects with our municipal partners, the TTC and York Viva. We'll get those built, starting this fall, and we need to get in place the sustainable funding for beyond 2013, both for the additional capital projects in the Big Move plan and for the operating costs of these facilities as they come online starting in 2013.

Mr. Jim Wilson: Recently the OECD commented that traffic congestion in the greater Toronto and Hamilton area was costing drivers about \$3.3 billion annually in lost productivity. They suggested recouping some of the lost revenues in terms of implementing tolls. What do you think about tolls on our roads?

Mr. Robert Prichard: I think it's too early for me to have an opinion on tolls. I think the job is to frame the challenge we face, and it's a double challenge: one, a financial challenge, the investment strategy, and the second, to create good options for commuters, drivers and riders.

We believe the congestion cost identified by the OECD at \$3.3 billion is a substantial understatement of the challenge we face. That's only the cost of additional gas and waiting time in the vehicles; it doesn't take into account the productivity losses to the region as well. The Metrolinx study that was done previously pegs to that number another \$2.7 billion, for a total of \$6 billion. But what is of greater concern is that the projection, looking forward to 2031, in the absence of intervention to increase options and transit opportunities to address the congestion issue—given the expected growth in the region from six million people to 8.6 million people, adding about a million cars to the GTHA—would go to \$15 billion.

We have a big challenge to address that congestion problem. We think we need to get on the table exactly what that challenge is, what the options are for dealing with it, and then begin the public debate as to what the right ways are to respond. If I, as president or chair of Metrolinx, began with the answers, I'd be violating the very process we intend to begin: a process of public engagement and public dialogue informed by the best evidence available locally and internationally about the experience of other cities. We're not the only region in the world to be addressing these issues, and we need to draw on the best learning that's going on around the world as we come to a view as to the right way forward for the GTHA.

Mr. Jim Wilson: Thank you.

The Chair (Mr. Ernie Hardeman): That concludes the time for the official opposition.

The third party.

Mr. Howard Hampton: Mr. Prichard, nice to see you again. I have a few questions.

You're taking over an agency that has some things that are being planned and some things that are already under way. Is that a fair assessment?

Mr. Robert Prichard: Yes.

Mr. Howard Hampton: Okay. I want to ask some questions about some things that are already under way. One of the things you are taking over is the so-called rail run from downtown to the airport. As I understand it, the province has already had negotiations with SNC-Lavalin about the operation of a train. That's a factual reality?

Mr. Robert Prichard: Correct.

Mr. Howard Hampton: My understanding is that SNC-Lavalin put forward a proposal for diesel trains.

Mr. Robert Prichard: Correct.

Mr. Howard Hampton: Those diesel trains would not be state-of-the-art technology?

Mr. Robert Prichard: Incorrect, I believe. They will be bound by the Minister of the Environment's order that any trains running on the expanded Georgetown corridor would have to comply with the minister's conditions. That would be true for SNC trains and GO trains.

Mr. Howard Hampton: But I want to make a distinction here between what the minister is ordering and what SNC-Lavalin has proposed. My understanding of what they proposed was not state-of-the-art diesel trains—in fact, what's called tier 2 technology.

Mr. Robert Prichard: If you'll permit me a minute of context: The negotiation between SNC-Lavalin and the province is being conducted not by Metrolinx but by Infrastructure Ontario. I'm not at the negotiating table, so what I report will be one step removed, but I don't believe there's any ambiguity that the agreement the province hopes to conclude with SNC-Lavalin would have to comply with the Minister of the Environment's conditions with respect to diesel technology. Whatever discussions there were in the past, prior to the minister's order, have been overtaken by the minister's order and conditions for Georgetown. So it's not possible to run the trains, it wouldn't be possible for the service to run, if the locomotives provided by SNC were not compliant with the Minister of the Environment's conditions.

Mr. Howard Hampton: But isn't that a problem? You're supposed to be designing, coordinating and implementing, and yet this very project is not within your boundaries. It's all being done by someone else. Isn't that a problem? Isn't that what you're supposed to do away with?

Mr. Robert Prichard: I don't think it's a problem. The airport rail link is one of the major projects in the Big Move; that is, the plan that's been articulated calls for rail transportation between Union Station and Pearson airport, number one. This negotiation that's being carried on is designed to realize that project. So that's a positive to us. Second, in order for SNC-Lavalin to operate the air-rail link, it has to do so over GO tracks and GO facilities, and GO-Metrolinx has to enter into agreement that would permit SNC to do that, which will ensure

compliance with all of the requirements we have for managing the corridor, so it can't operate without our permission.

The fact that we're not actually at the table, doing the negotiation with SNC-Lavalin, is not of concern to me because we have to enter the stakeholder agreement with SNC-Lavalin to support that service, and in that agreement we'll ensure that all the requirements of GO Transit and Metrolinx are met.

Mr. Howard Hampton: It seems to me that there is a problem. You're quite right: One of the conditions imposed by the Minister of the Environment on the project going forward was that the new rail service employ tier 4 diesel locomotives. It was very clear that the Metrolinx proposal has been prepared on the basis of tier 2 locomotives. Tier 4 is an emission standard that current locomotive technology does not meet.

Here's the real "but": The condition placed on the new service linking the airport and downtown requires the use of tier 4 locomotives "when service begins or when such locomotives are available." In other words, as you've said, you have no control over this. This is being negotiated by somebody else over there, but ultimately you're going to carry the can for this.

The order doesn't say you can't begin service unless you have tier 4; the order says you can begin service with tier 2, and maybe at some time possibly, perhaps in the future, when tier 4 becomes available—if it becomes available—then it becomes tier 4. Doesn't that cause you some worry that all these things you're ultimately going to be responsible for are being negotiated, the deal signed somewhere else, but you're going to carry the can for it?

Mr. Robert Prichard: I'm actually not concerned about it. The province is extremely transparent with Metrolinx and with me in particular. I get briefed, not on a daily basis but certainly on a weekly basis, on the progress of the project. My views as president of Metrolinx are sought as inputs to the process, and we also have to enter the stakeholder agreement to support it. So I feel completely informed. The only qualification I was giving you earlier was: What did SNC propose at the table at certain points? Because I'm not at the table, I can't answer that. But on the rest of it, I'm not concerned about it. Indeed, I'm excited about the prospect that after years and years of delay, we're on the verge of having a path to success of the line.

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On the question of tier 4 diesel: We're very comfortable with the order to have tier 4 diesels. We, based on our discussions with the manufacturing industry, are very confident that there will be tier 4 diesels available. That'll be true for us as well as for SNC-Lavalin, assuming that agreement is reached with SNC-Lavalin. I believe the services will open with tier 4 diesels in place.

GO Transit has a long history of always adopting the best available technology, the cleanest fuel. That's been a part of the GO tradition way before my arrival there, and this will be a simple extension of that tradition of trying

to be at the front edge of environmental concern with respect to the locomotives and their fuel.

Mr. Howard Hampton: It's funny you should mention the word "transparency," because in the act you work under, corporations' infrastructure projects are exempted from the procurement requirement under section 16 of the Ministry of Government Services Act: The contract for "construction, renovation or repair of a public work" will be put out for tenders.

I would think that's ominous, given that we've just seen the auditor's report on a billion dollars that went down the drain at eHealth. In the auditor's words, he didn't find much that was produced. Much of that was by way of untendered contracts.

I guess there's an accountability question here. One of the things we saw at eHealth was that there was no accountability. I think we even heard the deputy minister say that he felt powerless to control what was going on because everything had been set up over there. This is what worries me about Metrolinx: the power to grant seemingly endless untendered contracts. Nobody on the Metrolinx board is an elected representative. How do you put this in the context of what's gone on at eHealth?

Mr. Robert Prichard: You'll never hear me come back and say we were powerless. We are fully accountable under our statute. The board of directors is accountable, as is the present chief executive officer, so the notion that something is going to be done to us is not a concern. We may get something wrong, but it will be because we got it wrong, not because it was done to us by someone else.

On the issue of procurement, we are fully compliant with all the provincial directives on procurement and we follow them in full. We have modified all the procurement policies at Metrolinx to adopt all the new requirements that have been announced by the province. I believe our record on procurement has been very strong and will continue to be very strong and compliant with the province's highest standards for procurement. We've done a review of all procurement over the past number of years and believe it's fully compliant, and I believe we've put into place, both at the management level and in our reporting to the board and the audit, finance and risk management committee of the board, full transparency on our procurement. It will comply with the provincial requirements for procurement and do so in an accountable way, delivering value to the taxpayer for what are going to be very significant expenditures over the next number of years with this infrastructure program.

So proper procurement complying with the highest provincial standards is a central part of the mandate of Metrolinx. We have full control over that and therefore responsibility and accountability for it.

Mr. Howard Hampton: I appreciate your answer, but let me give you another example. We have in Ontario today something called the Ontario Power Authority. The Ontario Power Authority has signed contracts for tens of billions of dollars in electricity supply, but under the legislative system we have, the legislative make-up, they

can't be called before a legislative committee to be reviewed. We can call Hydro One before this committee, we can call Ontario Power Generation before this committee, but the agency that's out there signing contracts that the people have not even heard of is not reviewable—

The Chair (Mr. Ernie Hardeman): Mr. Hampton—

Mr. Howard Hampton: —and I submit to you that you're pretty much in the same situation.

Mr. Robert Prichard: We'll be completely transparent with the work we do. We have said that we will—all our policies have been amended to comply with the current provincial requirements. We are subject to the jurisdiction of the Auditor General and the provincial controller. All of our work can be reviewed through that process.

Speaking for myself, I'm happy to appear anywhere I'm invited by the Legislature to explain the work that we're doing. We're proud of what we're doing. We're setting a very high standard for this new organization. We do have the advantage of a clean slate and being able to set the bar high. I think that's what the people expect us to do, and we're very committed to not just setting the bar high but living up to that high bar of accountability and transparency and getting the job done to advance the greater Toronto and Hamilton area and address what is this really quite profound challenge we have to improve transit and transportation options to make this region even more prosperous.

Sorry, Chair. I see your anxiety to have me finish.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. Our time has expired, and we again thank you very much for coming forward this morning and enlightening us on your ambitions to move forward with Metrolinx.

Mr. Robert Prichard: I very much appreciate the opportunity to be here. Thank you, sir.

RAHUL BHARDWAJ

The Chair (Mr. Ernie Hardeman): Our second interview is Rahul Bhardwaj. He's an intended appointee as a member of Metrolinx.

As with the previous one, we will give you the opportunity to make a presentation. At the conclusion of the presentation, we will have questions from the three parties present—10 minutes for each party. The time for your presentation will be deducted from the government side. The first questioner in this one will be the official opposition. With that, we turn it over to you, Rahul, and we'll ask for your presentation.

Mr. Rahul Bhardwaj: Thank you, Mr. Chairman. Good morning, everyone. It's a pleasure to be here, and it's certainly a privilege to be considered for a position on the board of directors of Metrolinx. In my current role as president and CEO of the Toronto Community Foundation, I have the pleasure of sharing every year in what we call Toronto's Vital Signs. It's an annual snapshot of the city of Toronto. Among our many findings are

that transportation, and public transit in particular, is critical to not only the economy but the environment and the public health of the people in the region. So I commend you all for your investment in this, and I want to say that I consider this also a very important public service on my own part, given the gravity of the issue at stake.

I understand I have a few minutes to talk a little bit about my own suitability for the position, so forgive me if I highlight some of the things that I've done along the way, and I'll leave it to your good judgment to evaluate it.

I'm confident that my professional and community involvement would in fact add value to Metrolinx. Both my training and practice as a corporate lawyer, along with my operational experience running a large public foundation, provide me with the discipline, the insights and the experience to be an effective member of the board.

I've also had the privilege of contributing to city- and region-building through my board and volunteer involvements, and I'm going to highlight a few of them for you. I'm currently a member of the George Brown College board, as well as the executive committee and the finance and audit committee. I'm currently a member of the Stratford Festival of Canada board, as well as the human resources committee and the nominations committee, and I'm previously chair of the marketing committee. I'm also the former chair of the Toronto Downtown Jazz Festival and several other boards, including the board of directors of the United Way of Toronto and the executive committee, and I can't forget, of course, the Canadian Opera Company board, which it was also a pleasure to be a part of.

In addition to my volunteer roles, I was also vice-president of the Toronto 2008 Olympic bid and later as a member of Mayor Miller's blue ribbon fiscal review panel. I can assure you that this has provided me with a most unique education regarding the complex issues surrounding city- and region-building, and at all times it has been a privilege to serve in these capacities.

You'll find that I'm committed to fairness and accountability, good board governance and high ethical standards. Provided with the opportunity, I'll look forward to bringing this and much more to the board of Metrolinx.

Thank you for the opportunity of providing these introductory comments, and I look forward to answering your questions.

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The Chair (Mr. Ernie Hardeman): Thank you very much. With that, we will start with the official opposition.

Mr. Jim Wilson: Thank you very much for appearing this morning. I'm not exactly sure why we called you. You're eminently qualified for the position, I think, but I do have some of the usual questions.

Do you currently hold any membership in any political party, federal or provincial?

Mr. Rahul Bhardwaj: No.

Mr. Jim Wilson: How do you think the HST will affect your ridership, should you become a member of the board?

Mr. Rahul Bhardwaj: I haven't given that a great amount of consideration, to be frank with you.

Mr. Jim Wilson: It's the flavour of the week around here.

Unfair questions, but you're aware of the top priorities? I have a list of the top 15 capital priorities of the board. Has there been any informal discussion to date in terms of how the Pan Am games will affect that?

Mr. Rahul Bhardwaj: There certainly have been discussions at the board level that we've had both in open session and otherwise, and I think it's fair to say that those plans are evolving. I think there has been some discussion in the media about that. Short of getting into specifics about it, I think it's a very evolving process right now.

Mr. Jim Wilson: Again, going back to what Mr. Hampton was talking about with the chair, the electrification of the rail lines, particularly the Georgetown line—15 years on the horizon is what I read in the media. Do you have any personal thoughts on whether that should be sped up? Is it doable?

Mr. Rahul Bhardwaj: It's obviously a challenge, but I think we've got a lot to be really proud of as well. One of the highlights of this whole process has been the commitment to public consultation. As the thinking was evolving, it was clear that there were some challenges in the community, different options were put forward, and I think it's to the credit of the board and the operations of Metrolinx that they jumped into it with both feet and actually put together a process that's now looking at things.

As you know, we've got a group out there with terms of reference. They're going to be looking at this, and if there's an opportunity to move it ahead faster, I'm sure every opportunity will be taken to do that.

Mr. Jim Wilson: Great; thank you. I don't have any further questions.

The Chair (Mr. Ernie Hardeman): Thank you very much. We'll turn to the third party.

Mr. Howard Hampton: Thanks very much. I do have a few questions. Big Move number 9: "An investment strategy to provide immediate, stable and predictable funding." Okay?

Mr. Rahul Bhardwaj: Yes.

Mr. Howard Hampton: It says, under Big Move number 9, that \$744 million is already in the budget and \$11.5 billion has been committed. What does "committed" mean?

Mr. Rahul Bhardwaj: That's a great question. From our perspective, that means that we have the commitment of the provincial government to fund those as they go forward, and that's what we're relying upon at this point.

Mr. Howard Hampton: Okay. But you don't know when?

Mr. Rahul Bhardwaj: Specifically, no. I would expect that that would be funded as those projects required it on an ongoing basis.

Mr. Howard Hampton: All right. The other question I have is something I also took up with the chair. There seems to be a lot of confusion about Big Move number 2, high-order transit connectivity to Pearson airport district from all directions, the first part being rapid transit connections to Pearson airport from downtown, right? Part of the problem there, as I see it, is that this is a project, as Mr. Prichard just indicated, that you don't have any control over. It's being negotiated somewhere else; it's being managed, at this point, somewhere else; discussions are happening somewhere else. So how do you ensure that this is going to happen according to a plan when everything is being done somewhere else by someone else and you're told what's happening every once in a while, but again, you have no control over it? It seems to me a pretty peculiar thing when you're on the hook. It's part of your legislated mandate, but you have no control over it.

Mr. Rahul Bhardwaj: I guess my comments would be threefold. One is, I echo Mr. Prichard's comments; but secondly, at least from my perspective, I would say that there's control and then there's input. I wouldn't suggest by any stretch that we don't have input, particularly informally, so people understand what the position of Metrolinx would be vis-à-vis the evolving journey of what happens between Union Station and the airport, and all aspects of the other links as well.

The other thing is, I think, quite frankly, we have a certain amount of trust that everything is being negotiated within the context of the Big Move, so I think there has to be a certain implicit trust that there is a certain amount of alignment that's going to take place there, whether or not we're directly involved in negotiations at this stage of the process on the specifics.

Mr. Howard Hampton: You say that everything is happening according to or within the parameters of the Big Move. There's some irony, actually: I wanted to ask Mr. Prichard this because I think it was reported today in the Toronto Star that one of your high officials has said, for example, that what is known as Transit City in the city of Toronto, in his view, should be financed as a public-private partnership. Is that the direction we're going to see here: overwhelmingly private-public partnerships? Because, as I understand it, that's right up there as one of the first Big Move items.

Mr. Rahul Bhardwaj: I didn't get the opportunity to read the article this morning, so I'm not sure about the context of the quote. But to answer your question, this is a learning journey for everybody. I think that what the board has been discussing is that we need to keep our options open on what the available financing mechanisms are on a go-forward basis. So for me to suggest right now what I think is going to be overwhelming or what we're going to land on is really premature.

Mr. Howard Hampton: Let me give you an example. We had the auditor's report on the Brampton hospital,

which originally was floated as a public hospital. When it was finally built, it was a public-private partnership. The auditor reviewed it and basically said that the costs of going the private-public partnership route were about 100% greater.

The new hospital in Sault Ste. Marie is being built as a public-private partnership. While we haven't heard anything official, what we're being told is that the cost is now two and a half times what it would have been as a publicly financed, publicly built hospital.

As I mentioned to Mr. Prichard, one of the things I find troubling about your organization is that you can grant all kinds of untendered contracts. In fact, there doesn't seem to be any financial limit on your untendered contracts.

One of those things would bother me. Two of those things together—public-private partnerships and granting absolutely untendered contracts—scared the hell out of me. How do you feel about it?

Mr. Rahul Bhardwaj: I think you've raised a couple of examples of AFPs or P3s that may not have met the standard you'd be looking for. I'd also look at what's happening in Vancouver between the downtown and their airport, and they've had a great amount of success in that.

I think your question was really to say: Have we prejudged this and is there a particular mechanism or vehicle that we're wedded to on a go-forward basis? I'd say no; that's simply not the case. We're exploring all sorts of options within the context of what we think is the appropriate fiduciary duty of a board.

Mr. Howard Hampton: If I reflect on the last two years, it looked as if Transit City was well on its way in Toronto, yet today you read in the paper that something as fundamental as financing is now looking very seriously at the public-private financing route. It sounds to me like decisions have already been made.

Mr. Rahul Bhardwaj: You've raised my curiosity. Now I want to read the article, because I really don't know about the specifics of that discussion.

Mr. Jim Wilson: I was just reading it.

Mr. Howard Hampton: I don't think I'm being inaccurate, am I, Jim?

Mr. Jim Wilson: Not about the article.

Mr. Howard Hampton: Oh.

Mr. Rahul Bhardwaj: Sorry, have I failed to answer your question?

Mr. Howard Hampton: That's fine.

The Chair (Mr. Ernie Hardeman): Okay. Have you concluded? Very good. Thank you. The government?

Mr. Michael A. Brown: Ms. Pendergast has a question, Chair.

The Chair (Mr. Ernie Hardeman): Yes? Oh.

Ms. Leeanna Pendergast: Good morning, Chair.

The Chair (Mr. Ernie Hardeman): Ms. Pendergast.

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Ms. Leeanna Pendergast: Good morning, Mr. Bhardwaj. Thank you for being here. I'm just looking over your CV, your resumé. It's quite an eclectic background: Ivey school of business and law, and mixed in

there is the Stratford festival and your involvement with jazz and theatre and opera and the art gallery. It goes on and on, as you know.

My attention has been drawn to your involvement with the Olympic bid. That being quite a unique experience, obviously tapping your expansive skill set, I'm wondering if you can elaborate for us, please: What skill set, what expansive expertise do you bring as a result of that experience that would help you perhaps understand the complex issues that Metrolinx is currently grappling with?

Mr. Rahul Bhardwaj: I think I'd start off with: Dream big. I think the bid was all about city-building and region-building. It invited everybody in southwestern Ontario and, in that case, Canada to raise their eyes above the horizon. I think that that was a very empowering process to go through. It also demonstrated to me personally that region-building initiatives like this have a lot of offshoots, such as developing a new generation of leadership, that are somewhat unintended consequences but have a long-term and lasting effect on this. That's on the dream side.

On another side, I was very involved with the community consultations that were involved in this. This was a pledge to social equity along with the games as well. We had a very deep consultation process with members of the communities that would be affected not only by the infrastructure development but those who had interests in what was going on in the city with respect to the games. I have a deep personal commitment to community consultation and its contribution to helping define and refine big dreams such as this so that they do work for many.

I also had the privilege of being involved in it at a certain governance level in the sense that I was involved in all the board meetings and a lot of the political discussions, sometimes as a party, sometimes as an observer, to understand how these decisions and discussions are forwarded and, frankly, what the tenor of discussion is on and how to keep them on track. Those are things that I'm seeing very much come up as well in the board discussions that we're having now, so it's something that I hope to bring more value to as well over time.

Ms. Leeanna Pendergast: Excellent; thank you.

The Chair (Mr. Ernie Hardeman): Any further questions?

Mr. Michael A. Brown: No, Mr. Chair.

I would indicate how pleased we are that a person of your qualifications would honour us by putting your name forward for a board as important as this to the province of Ontario. Thank you.

Mr. Rahul Bhardwaj: Thank you for the opportunity to serve.

The Chair (Mr. Ernie Hardeman): Thank you very much for making a presentation and making yourself available this morning to the committee to answer our questions. With that, we'll conclude this part of our hearings.

Mr. Rahul Bhardwaj: Thank you, Mr. Chair.

ROBERT MacISAAC

Review of intended appointment, selected by the third party: Robert MacIsaac, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): Our third and final interview is Rob MacIsaac, intended appointee as a member of Metrolinx. As he's coming forward, I would just point out that the bells are ringing for a vote, so we have—let me check here. I think it's 10 minutes.

Mr. Yasir Naqvi: Sixteen.

The Chair (Mr. Ernie Hardeman): Sixteen minutes; sometimes you have to put your glasses on. We will start the presentation, and I'd like to point out, Mr. MacIsaac, that when there are about four minutes left—I would think we can all get there to vote in four minutes—we will have to leave you for a period of time to go and do the vote. Then we'll come back and conclude the interview if it's not completed before that time.

With that, as with the previous applicants, we will tell you that if you wish to make a presentation, you can do so. Upon completion of the presentation, we will have questions from the committee, starting this time with the third party. Each party will have 10 minutes, and the time you take to make your presentation will be taken from the government's 10 minutes. I want to say that in the time that we've been doing this, it never seems to bother the opportunity of the government to get their questions out. We ask you to make your presentation, and we'll proceed from there.

Mr. Robert MacIsaac: Thanks very much, Mr. Chair. Thank you to the whole of the committee for the invitation. It's an honour to appear before you again, Mr. Chair. I think our paths have crossed a number of times over the years.

I'm very proud to stand for the nomination as a member of the board of Metrolinx. Members of the committee perhaps will be aware that I have been the first chair of Metrolinx, and I've served on that agency over the past three years. I was, in fact, the first person through the door when we were really just a start-up agency, and I was the first employee. Over the past three years I've worked to staff the organization and to develop a comprehensive set of what I think are state-of-the-art policies, procedures and guidelines to govern the organization. I've worked with the first board to develop a regional transportation plan, which I think is really the first of its kind for this region. At the end of the day, it was very gratifying to see that the plan was unanimously approved by the first board of directors of Metrolinx.

I should brag just a tiny bit: I was very pleased to be in Niagara last month to accept the Canadian Institute of Planners award of excellence, which was given in recognition of the work done on the regional transportation plan that we call the Big Move.

Over the last three years, I think we've made very good progress in moving the agency forward in every area of its mandate, including goods movement and a multi-modal approach to transportation planning—an

approach, by the way, which integrates both land use planning and transportation planning, which I think has been a policy problem that governments around the world, but most particularly in North America, have grappled with for many decades.

We developed a world-class triple-bottom-line evaluative method for transportation projects, which I think is something that this jurisdiction can be very proud of, looking at the environmental, economic, and social implications of any particular project and examining various alternatives for projects. Our plan, at the end of the day, I think, will make a really big difference for this region.

Just in terms of my own background, I'm a lawyer to begin with, and I was the mayor of Burlington for nine years. I served on many boards which I think are relevant to the subject matter before you: the board of AMO, the Canadian Urban Transit Association, the Canadian Urban Institute, and I'm a member of the Pragma Council at the University of Waterloo. All of those experiences really nurtured in me a passion for developing city regions, and it's something that I've thought a lot about over the course of my career and done a lot of work on.

I was very privileged to work as a member of the smart growth panel, and led the group of individuals within that panel that developed a strategic growth management plan for south-central Ontario, which ultimately resulted in the growth plan that we see today. I was also very privileged to chair the greenbelt task force, which resulted in some two million acres of land being preserved in its current state. I think both of those exercises, together with this exercise in transportation planning, are fundamental in terms of being able to develop the potential that this city region has as a player on the world stage. Frankly, I was talking to my board last night, and I said, "You know, I think there are lots of planners who would have felt very lucky to have been a part of any one of those exercises," and for me to participate in all three is an extraordinary privilege and honour which I feel very fortunate to have had.

Let me just finish with a little bit of context. I think my work at Metrolinx is almost done. I've been there for three years and helped to recruit my successor, Mr. Prichard, who is going to—depending, of course, on the deliberations of this committee—step into the chair sometime in the new year. He'll do that when we find a replacement for him. We have a search process under way for a new CEO. When the new CEO is found and appointed and steps onto the board, my view is that it's appropriate for me to step off of the board. I think that's likely to happen early in the new year.

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I think this appointment, again subject to the deliberations of this committee, will be a fairly short-term one because I've now taken on some new responsibilities. I've been appointed the president of Mohawk College; I've been there since February. So I've really been working part-time in this job and really focused on governance as opposed to the day-to-day operations of the agency. Beginning next February or thereabouts, I

intend to devote my full time and attention to my new duties.

The Chair (Mr. Ernie Hardeman): With that, we will start the questions. We don't have quite the full 10 minutes, but you can get your five minutes in, and then we will come back to that after we go to vote.

Mr. Howard Hampton: I want to take you up on the issue of governance because one of the tasks, as set out in the legislation for Metrolinx, is "to act as the central procurement agency for the procurement of local transit system vehicles, equipment, technologies and facilities and related supplies and services on behalf of Ontario municipalities." I want to understand how this works. You sign the contracts?

Mr. Robert MacIsaac: The contracts are ultimately signed by Metrolinx; that's right.

Mr. Howard Hampton: But the municipality pays the bill?

Mr. Robert MacIsaac: That's correct.

Mr. Howard Hampton: I'm always worried when I have to pay the bill but somebody else gets to negotiate and sign the contract. What governance structures are there to ensure municipalities get a good deal?

Mr. Robert MacIsaac: The first thing I should say is that it's essentially a co-operative, so municipalities only participate if they want to. They're not obliged to participate in this.

This is really a purchasing co-op. We've set up a very comprehensive set of guidelines, working with municipalities, to come together, to pool their purchasing power and to get better deals on transit vehicles and so on. In fact, the first procurement went through last year and resulted in a savings of something like \$5,000 or more per bus.

The idea, sir, is that if a municipality needs to buy some buses, they have the option of coming to us, pooling their purchasing power with a number of other municipalities and working under a contract which, I think, is very thoughtful and collaboratively developed, and we go out to the industry for a tender. We had three or four very significant manufacturers respond; New Flyer was the successful proponent after our first round. But everybody who was involved in that, I think, felt that it was a good deal and a good process.

Mr. Howard Hampton: So I just want to be clear: Municipalities always have the option of saying no?

Mr. Robert MacIsaac: Of course.

Mr. Howard Hampton: They can opt out?

Mr. Robert MacIsaac: Of course. We're not sure why they would, but—

Mr. Howard Hampton: When do they have to exercise that option?

Mr. Robert MacIsaac: We will go out on tranches under this, probably on an annual or biannual basis. I think if we had a sense that there were enough municipalities to do something sooner, we would do that. It's really just a matter of trying to align our processes with the procurement needs of municipalities.

I haven't looked at that contract for a while. My recollection is that there are options for municipalities to purchase further vehicles under the original contract should they so choose.

Mr. Howard Hampton: Which municipalities are we talking about? Do you remember?

Mr. Robert MacIsaac: Hamilton was involved. Mississauga and York region—I can't recall. There were more, but those were three of the major players.

Mr. Howard Hampton: And New Flyer won the tender?

Mr. Robert MacIsaac: That's right.

Mr. Howard Hampton: Do you remember how many buses were involved? Ballpark.

Mr. Robert MacIsaac: Do you know what? I would be approximating.

Mr. Howard Hampton: Yes, that's fine.

Mr. Robert MacIsaac: I think we're talking about 50 to 75 buses.

Mr. Howard Hampton: One of the other legislative mandates you have is to provide leadership in the co-ordination of planning and financing. As I understand public-private partnerships, what essentially happens is that the construction costs, the financing costs and the operating costs don't get paid up front; they get paid over, say, a 25- or 30-year time period. In other words, you can give the appearance of saving on the up-front costs, but it has the nature of effectively increasing your operating costs over the first 25, 30 or 35 years of the contract. Is that a fair assessment?

The Chair (Mr. Ernie Hardeman): This would be a good time to suggest that you hold that thought. We will return subsequent to the vote.

Mr. Robert MacIsaac: It's a very profound thought, but I'll hold.

The Chair (Mr. Ernie Hardeman): We will recess to vote.

The committee recessed from 1006 to 1018.

The Chair (Mr. Ernie Hardeman): We'll call the committee back to order. With the committee's consent, we'll just defer the five minutes that Howard still has left and we'll go to the government side for questions and comments. Hopefully Howard will be here before that is completed.

Mrs. Laura Albanese: I just had one question, and that is, recently the board has approved the recommendation by the community advisory committee on the study of electrification and you have issued an RFP. Can you talk a little bit about that and what that's going to entail? And do the Minister of the Environment's recommendations for tier 4 preclude electrification?

Mr. Robert MacIsaac: The Big Move suggested that one of the really transformational things that we could do in our transportation system is to begin the process of electrifying public transit, more particularly GO Transit throughout the region. I believe that this one thing perhaps more than any other is something that will ultimately really help to change the way people get around in the

region. Having said that, it's really expensive and it's something that can't be done overnight.

We engaged a community advisory committee here in the region to help to develop terms of reference which will allow us to go out and get some consulting help to develop a plan for electrification across the region. At the end of the day, we need to answer a whole bunch of complicated questions, such as: What would cause you to electrify a line or choose not to electrify a line? What would the priorities be? Which lines should go first? Which lines should go second? What other emerging technologies might you consider in lieu of electrification?

I think the regional transportation plan, the Big Move, basically put forward the big idea about electrification and how important it could be. We're now about to get into studying the details, if indeed you decide that it's worthwhile to electrify, of what's the most rational approach in order to implement this across a huge region, given the very significant capital costs that are entailed. I think it's an important step in the right direction.

Mrs. Laura Albanese: At this point, if I still have more time, Mr. Chair, I would ask—the question I get asked most often is: Why can't it be done in more immediate terms, aside from the cost? It is being implemented in other parts of the world, so what's the big challenge?

Mr. Robert MacIsaac: I guess the big challenge is, we have a huge mega-region here that has lost a generation of investment in transportation. We've allowed all kinds of things—and I say this in a non-partisan way. All political stripes have participated in a decline in transportation infrastructure in this region, so we need to make up for that. A generation's worth of underinvestment can't be made up for overnight.

The Big Move, the regional transportation plan, is an important watershed, a turning point, I think, in terms of the ability of this region to have a world-class transportation system, but we need to be patient and we need to accept the fact that it's going to take some time to overcome the sins of the past.

I neglected to answer your earlier question. There's nothing in the Minister of the Environment's statement that would preclude us from electrifying sooner. He's not saying, "You must use tier 4 diesel technology on the line." So it is indeed possible, but I think we need to take a studied, measured approach to how we implement electrification across the region.

Mrs. Laura Albanese: Thank you.

The Chair (Mr. Ernie Hardeman): That concludes your time.

Mr. Michael A. Brown: Mr. Chair, I just wanted to point out that I have provided committee members with a letter from the Deputy Minister of Transportation to Mr. Prichard.

The Chair (Mr. Ernie Hardeman): Thank you very much, Mr. Brown. Mr. Wilson.

Mr. Jim Wilson: Thank you, Mr. MacIsaac, or, as I'm used to referring to you over the years, Your Worship, for your service on Metrolinx, and congratulations

on becoming president of Mohawk College. As the PC critic for colleges and universities and research and innovation, I look forward to working with you.

I just have one question. Mr. Prichard talked about new tools in the newest legislation to allow Metrolinx to reach its goals and get the job done. I'm not familiar with what's different now than what was different during your time. Do you want to enlighten me?

Mr. Robert MacIsaac: From my perspective, the most significant—I'm probably showing my bias towards the importance of planning—is the ability of the Minister of Transportation to issue policy statements surrounding transportation.

The idea is that Metrolinx is responsible for developing regional transportation planning and policy. That planning and policy will be empowered via policy statements made by the minister, and municipalities across the whole of the region are obliged to bring their official plans and their master transportation plans into conformity with those provincial policy statements. I think this is a very significant tool, going forward, to make sure that we're all rowing in the same direction insofar as municipal infrastructure and provincial infrastructure all falling into place. I think we can talk about things like the change in the board of directors—from my perspective, a positive development that will allow us to implement the plan in a way that's more efficient and effective than were we to stay with the former governance model.

Having said that, I think that the original board did yeoman's work, and I don't think we could have gotten to where we are today without that original board. I kind of feel like we ended up with the best of both worlds.

Mr. Jim Wilson: Thank you and good luck.

Mr. Robert MacIsaac: Thank you.

The Chair (Mr. Ernie Hardeman): Thank you very much, and we now go to the third party. We have deferred the completion of your questioning, Mr. Hampton.

Mr. Robert MacIsaac: Mr. Chair, is it fair for me to ask that the question be repeated?

The Chair (Mr. Ernie Hardeman): Yes.

Mr. Jim Wilson: For all of us.

Mr. Howard Hampton: The concept, as I understand it, of public-private partnerships is that instead of paying, say, \$2 billion up front for the construction of something, the financing costs and the construction costs almost become a part of operating costs, say, over a 25- or 30-year period. So it has the effect of having the public believe that something doesn't cost as much in the time of construction, but those costs are paid over time, along with, I think, significant charges—interest and otherwise—so it has the effect of creating your operating costs. Fair conclusion?

Mr. Robert MacIsaac: Well, I think that—with respect, I don't think I agree with that. I think if you debt-finance in any capacity, it has precisely the same effect that you're talking about.

For example, municipally, I used to finance public works all of the time on the basis of the debentures. I guess I can say the same thing: By going out and borrow-

ing that money and doing those works, it might give the appearance that you weren't incurring the whole of the cost in the early days, at the start, and in fact, you're probably increasing your costs going forward because you have to borrow the money and you have to pay interest on the money.

I think that any time you don't take the cost of a capital work out of your current budget, you're doing what you're suggesting. Having said that, there are lots of good reasons, I think, for deferring costs over the life of a capital work. I think from a public policy point of view, you might ask: Why wouldn't you have the users of a work help to pay for it over its useful lifetime rather than trying to get everybody who happens to be in the room on the day you build it pay for the whole freight?

Mr. Howard Hampton: We can debate some of this back and forth, but I think you agree with the general concept. In effect, you're deferring costs over time.

One of the issues that you have to come to grips with, and Metrolinx has to come to grips with, is not just capital costs but operating cost. We're talking, I'm told here, about \$50 billion in capital construction, and today's paper says that the \$10-billion Transit City is seriously considering public-private partnership.

So let me ask you this: Do you have any sense at this time what ongoing operating costs would be—

The Chair (Mr. Ernie Hardeman): I would ask you to complete your question, Mr. Hampton.

Mr. Robert MacIsaac: Do I have any sense of what ongoing operating costs will be for all of the works that we have in our plan?

Mr. Howard Hampton: Yes.

Mr. Robert MacIsaac: We've done broad-brushed projections of both capital, operating and state-of-good-repair costs. I apologize, but I don't have those for you off the top of my head. But it's fair to say that in our early deliberations around an investment strategy, our philosophy is that those three components need to be accounted for as we come to terms with what the appropriate revenue and financing techniques will be for the whole of the regional transportation plan.

The Chair (Mr. Ernie Hardeman): We're going to have to stop the debate there. Thank you very much for your presentation.

Mr. Robert MacIsaac: Thank you, Mr. Chair.

The Chair (Mr. Ernie Hardeman): Now we will proceed to concurrences. The first one is the concurrence for Robert S. Prichard as intended—

Mr. Jim Wilson: Mr. Chair, on a point of order: Since the government won't hold public hearings on the HST legislation, I'm going to ask for a 20-minute deferral on these votes for concurrences, under the standing orders.

The Chair (Mr. Ernie Hardeman): Okay. The option is, of course, we get a concurrence motion and then the 20-minute deferral. That will take it past the time of this committee so we will not be able to do any of the other votes. The other option is to ask for a seven-day deferral on all three appointees, with consideration to be given at the next meeting.

Mr. Jim Wilson: Then I would ask for the seven-day deferral.

The Chair (Mr. Ernie Hardeman): With that, the time has expired. I did want to point out that the next meeting is Tuesday, November 24, starting at 8:30 in the morning.

The reason for the 8:30 meeting is that the applicant being interviewed first could not do it beyond 8:30. He has another obligation, so he needs to do it early in the morning.

Mr. Michael A. Brown: Do we not have to vote on deferral?

The Chair (Mr. Ernie Hardeman): No.

Mr. Michael A. Brown: Is it not automatic that these people are concurred with if we do not deal with them—

The Chair (Mr. Ernie Hardeman): No. The member asked for a deferral.

Mr. Michael A. Brown: But they were already deferred. These people were already deferred.

The Chair (Mr. Ernie Hardeman): The member asked for—

Mr. Michael A. Brown: How many times can you defer? I'm asking the clerk.

The Chair (Mr. Ernie Hardeman): Go ahead.

Mr. Michael A. Brown: I don't have the standing orders with me right now. It seems to me there's a limit. If I recall from the standing orders, there is a limit to the number of times you can ask for deferrals. If not, then the appointment is concurred with.

The Clerk of the Committee (Mr. Douglas Arnott): The standing orders provide for two deferrals. The first was the extension of the deadline, and the second, in this case, is the deferral of the consideration at the conclusion of the interviews for up to seven days. It's the latter deferral that Mr. Wilson requested today.

Mr. Michael A. Brown: Thank you.

The Chair (Mr. Ernie Hardeman): With that, we'll adjourn the meeting.

The committee adjourned at 1032.

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Journal des débats (Hansard)

Mardi 24 novembre 2009



Standing Committee on Government Agencies

Intended appointments

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STANDING COMMITTEE ON
GOVERNMENT AGENCIES

Tuesday 24 November 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Mardi 24 novembre 2009

The committee met at 0837 in committee room 1.

INTENDED APPOINTMENTS

The Chair (Mr. Ernie Hardeman): Good morning, everyone. We'll call the meeting to order. The first order of business this morning is to apologize for being late. I was reading and not watching the clock. This will happen.

But obviously, with that, we will call the meeting to order and we do have to consider the concurrences from the hearings we had last meeting.

ROBERT PRICHARD

Review of intended appointment, selected by third party: Robert Prichard, intended appointee as member and chair, Metrolinx.

The Chair (Mr. Ernie Hardeman): The first of the concurrences will be Robert S. Prichard. Can we have someone to move the concurrence? Mr. Brown?

Mr. Michael A. Brown: I would move the concurrence of J. Robert S. Prichard as member and chair of Metrolinx.

The Chair (Mr. Ernie Hardeman): Thank you very much. Any discussion? If not, all those in favour? Opposed? The motion is carried.

RAHUL BHARDWAJ

Review of intended appointment, selected by official opposition and third party: Rahul Bhardwaj, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): The second concurrence is Rahul Bhardwaj.

Mr. Michael A. Brown: Mr. Chair, I would move the appointment of Rahul Bhardwaj as member of Metrolinx.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Any discussion?

Mr. Michael A. Brown: Could we have a recorded vote?

The Chair (Mr. Ernie Hardeman): A recorded vote has been requested.

Ayes

Brown, Johnson, Klees, Naqvi, Pendergast, Sandals, Wilson.

The Chair (Mr. Ernie Hardeman): The motion is carried.

ROBERT MACISAAC

Review of intended appointment, selected by third party: Robert MacIsaac, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): The third consideration is Robert MacIsaac, intended appointee as a member of Metrolinx.

Mr. Michael A. Brown: Chair, I move concurrence in the appointment of Rob MacIsaac as member, Metrolinx. Recorded vote.

The Chair (Mr. Ernie Hardeman): Any discussion?

Ayes

Brown, Johnson, Klees, Naqvi, Pendergast, Sandals, Wilson.

The Chair (Mr. Ernie Hardeman): The motion is carried.

That concludes the consideration of the appointees interviewed last meeting.

PETER SMITH

Review of intended appointment, selected by third party: Peter Smith, intended appointee as member and vice-chair, Metrolinx.

The Chair (Mr. Ernie Hardeman): The first interview this morning is Peter Reginald Smith, intended appointee as a member and vice-chair of Metrolinx. Mr. Smith is coming forward. Mr. Smith, thank you very much, first of all, for coming this morning, and secondly, if you choose to do so we'll give you an opportunity to make a presentation. We will then have questions from the caucuses around the table. We will start the questioning this morning with the government caucus. Each party will have 10 minutes for questioning and hopefully the conclusion will be half an hour allotted for the total interview.

With that, we'll turn it over to you to make your statement.

0840

Mr. Peter Smith: Thank you very much, Mr. Chairman. I'm delighted to be here this morning. I would like to make a statement.

In preparing these introductory remarks, I reviewed the remarks I made to the standing committee of appointments back in 2004, when I was first nominated to the board of GO Transit. At that time, I indicated that GO Transit carried 44 million passengers a year, and it would take about 48 additional lanes of highway to carry as many people in the rush hour as GO Transit carries. I stated that growth pressure continued at that time in the GTA, but we were told we could not afford to build new transit. The truth is—and I said it at the time—we cannot afford not to build more transit.

I further stated at the time that GO Transit is an agency with both the public policy role of addressing traffic congestion and a commercial mandate to operate an efficient business while providing affordable transit in the greater Toronto area. I proposed at that time that these were challenges I believed I could address because of my breadth of experience and my commitment, over a lifetime, to good corporate governance and to improving the quality of life in our communities and our province.

Today I'm here before you as a nominee to continue my service on the board of Metrolinx. Today the new Metrolinx/GO Transit carries more than 55 million passengers a year, a 25% increase since 2004. We now have 59 stations in our system and in excess of 50,000 parking spots.

Expansion and modernization of the GO system has carried on over the last number of years and continues today. We've introduced the new MP40 locomotives, which give us the ability to pull 12 cars instead of 10, which is 300 more people per train each trip. We're just completing the new third line on the Lakeshore West line. We're expanding the Georgetown South line. We've expanded service to Barrie. We have a greater commitment now to restoring the vibrancy of Union Station, the revitalization of that facility. We've expanded our bus/rapid transit system. We've moved to third party crewing on our trains. We've built new bus storage and maintenance facilities. We introduced, last year, the new double-decker buses. I can indicate to you, in a very strong sense, that we have improved our customer service responses.

I participated in the discussions that led up to the merger of GO Transit and Metrolinx, and I can report to you that I am delighted that the new organization is functioning well with its new board, on which I serve as vice-chair. Now the operational expertise of GO Transit is part of an organization with a much larger mandate: to provide leadership in the planning, financing, development and implementation of an integrated transportation network. Metrolinx serves a broad regional transportation area. In addition to operating GO Transit, it's responsible for planning for the future and delivering projects and services which will make our communities more livable.

We are energized as a board. We're energized by the new organization under the leadership of Mr. Prichard

and Mr. MacIsaac. We're energized by the big five projects that Mr. Prichard spoke to this committee about last week; by the renewed commitment to customer service and the introduction of a passenger charter; by the imminent implementation of the PRESTO fare cards, the smart card system; by the ongoing expansion of GO Transit; by the development of vibrant mobility hubs such as the Kipling station; by our involvement in the revitalization of Union Station; by our involvement in the development of an investment strategy going forward; and by investigation into the cost, the timing and the options for electrification.

These are exciting times for public transit, but they're challenging times. I would like to continue to be part of that challenge in addressing these issues, and I believe I'm well-suited to serve on the board of Metrolinx.

Very briefly, I own my own company, Andrin Homes. It's a real estate development company that operates throughout the greater Toronto area, as far east as Whitby and as far west as Kitchener. Prior to that, I was the housing commissioner for the region of Peel, and prior to that I was the senior planner for the region of Peel. I'm a graduate of McMaster University and have a master's in public policy from the State University of New York.

For eight years I was chairman of the Canada Mortgage and Housing Corp. For 12 years I served on the board of the Credit Valley Hospital, three of those as treasurer. I currently sit on the boards of Brampton Brick and GeoGlobal Resources, which are publicly listed companies; and I serve on the boards of Tarion Warranty Corp. and First Canadian Title insurance.

I live in Mississauga and I'm a frequent rider of GO Transit. I'm delighted to be here and I look forward to answering questions.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. With that, we will turn to the government caucus for questions.

Mr. Michael A. Brown: Thank you for coming this morning, Mr. Smith. We really appreciate your experience and your knowledge of this very important commission or board. I just want to indicate to you that we appreciate you putting your name forward and the government will be supporting your concurrence.

Mr. Peter Smith: Thank you very much.

The Chair (Mr. Ernie Hardeman): Thank you very much. The opposition? Mr. Klees.

Mr. Frank Klees: Mr. Smith, thank you for making yourself available to serve in this capacity. You've certainly got impressive experience. I'd like to ask you a couple of questions about how you see the role of Metrolinx. You were on the GO board.

Mr. Peter Smith: Yes.

Mr. Frank Klees: The mandate of Metrolinx is really quite different in some ways. Could you just describe for us the fundamental difference between the mandate of Metrolinx as compared to GO?

Mr. Peter Smith: Sure, I'd be delighted to. Mr. Klees, GO Transit has been an operating agency since 1967, as I have described. It developed the transit system that runs

throughout the GTA, runs the trains, runs the buses, and, in my view, is a very efficient system that has helped to develop the whole greater Toronto area. Not one new laneway of roads has been built over the 40-odd years that GO Transit has been in existence, and yet if you look at the skylines of downtown Toronto 40 years ago and today, you see massive buildings that were not there 40 years ago. I see GO as essentially an operating agency that has functioned well.

I see Metrolinx as serving a broader area. I see Metrolinx as a planning body. I see Metrolinx as an organization that has been challenged to come up with a financial strategy for funding the development of the projects that it intends to develop over the years.

It's a broader agency that encompasses GO Transit. I think the agency itself, when it was first set up in May of this year—it was very clear in the statement from the government that the intent was to continue the current expansion of the GO system within the broader planning and implementation mandate of Metrolinx.

Mr. Frank Klees: There are now no politicians on the board, which I believe is a step forward. I objected very strongly during debate when, originally, the mix included elected officials. I think the role that you have is an important one and should be beyond politics, if I can put it that way.

You are very entrenched in the Peel community. You're on a number of boards. In fact, I see one of your references is Hazel McCallion. How well do you know Hazel?

Mr. Peter Smith: Very well. Mr. Klees, she asked me to serve on her family charitable foundation board to create a legacy, and I'm delighted to do that. I've known her a long time.

Mr. Frank Klees: Hazel gave me a very difficult time when I was Minister of Transportation.

Mr. Peter Smith: Over the years, she's given me a hard time too.

Laughter.

0850

Mr. Frank Klees: She is a very effective lobbyist.

I think one of the dysfunctions of the previous constitution of boards attempting to deal with transit in the greater Toronto area is that priority projects were not necessarily always given the nod because they were the right project based on planning principles and based on what was right from a transit planning model, but because of the muscle that was being applied by certain politicians who had the strength at the table. How do you deal with that? As a member of the board, you have responsibility now for overseeing planning and prioritizing. How do you deal with ensuring that those decisions are based on good, solid transportation planning principles as opposed to the tug-of-war that goes on because someone doesn't want it in their backyard or someone is approaching an election and they've made a commitment to their constituents that they're not going to have this in their backyard? How do you, as a board member with very strong ties to one area of the GTA, deal with that?

Mr. Peter Smith: I think all of us on the board, approach our responsibilities seriously and without any prior commitment to any particular area or any particular project. The development of the Big Move was done under the previous board, which did include politicians. There was unanimous agreement on the original plan for Metrolinx. It is now left in the hands of a 15-person board. As you point out, none of us hold elected positions anywhere.

I think the challenge for us is to work collaboratively with our partners—our federal partners, the provincial government, all of the municipalities—to ensure that we have policies and procedures in place that enable us and guide us in running a very good organization and in making sure we have the best professional staff possible, which I believe we have retained over the past four or five months. The organization and the skills and talents of the individual board members on Metrolinx, I think, are amongst the best I've ever seen on a board that I've operated on.

We have debates. We have differences of opinions. At the end of the day, we do come to, I think, good conclusions. We will review the priorities over time, and if it is proposed to us by our staff and amongst ourselves in our deliberations as board members that there need to be some changes, we'll address them at that time.

Mr. Frank Klees: Thank you. I know Mr. Wilson has a question.

The Chair (Mr. Ernie Hardeman): Very quickly. You have about a minute and a half.

Mr. Jim Wilson: Thank you very much, Mr. Smith, for appearing before the committee and for taking on this task of continuing to be on the board of Metrolinx.

It has been a big hit—the GO train to Barrie. My riding abuts the city of Barrie, and I go down as far south as Tottenham. Now the question I get is, "Will you ever run GO trains to Tottenham?"

Mr. Peter Smith: I'll have to get back to you on that, but I don't believe that that's in any of our plans at this current point in time.

Mr. Jim Wilson: I'll vote for you if you change your plan.

Mr. Peter Smith: As I just said to Mr. Klees, it's not one person who determines the priorities of Metrolinx.

The Chair (Mr. Ernie Hardeman): Mr. Bisson.

Mr. Gilles Bisson: To that point, a general comment from myself: Having elected officials on a board like yours, I think, is not a bad thing. At the end, we're all politicians. We all represent, in one way or another, our own particular views. Whether you're elected or non-elected, you have views, as I do. The only difference now is, rather than lobbying the elected politician, they'll lobby the appointed board.

At the end of the day, I would argue that with elected politicians, there is better scrutiny. It's called a general election every four years, so the public is able to get at us.

I'm sure you'll do a great job, but you're no different than I am as a human being who believes in what you

believe in and does what you do. The fact that politicians aren't on Metrolinx I don't think is an argument that strengthens it.

Just a couple of things: In discussions I've had with GO Transit over the years in regard to increasing capacity, one of the problems is the bottlenecks on the rail lines.

Mr. Peter Smith: Yes.

Mr. Gilles Bisson: Any particular ideas on how to overcome that? It is one source preventing us from expanding the system to the point that we need to. Any thoughts?

Mr. Peter Smith: You're absolutely correct. In my introductory comments, I referred to the expansion on the Lakeshore line as an example. The introduction of the third rail clearly allows us to expand our service on the Lakeshore line. The work that we're currently doing on Georgetown South, the separation of the CP and CN rail lines so that they're not at grade but one goes under the other, will enable us to expand our service to Brampton-Bramalea, which is currently underserved, and to move that line out to Georgetown, Guelph and Kitchener-Waterloo.

The other area that I should remind everyone of is: Union Station was built in the 1920s. It has a certain capacity. Until we can deal with the capacity at Union Station, we cannot continue to expand. There's no way of getting more trains in. The current revitalization of Union Station is absolutely essential because it's the core of our system. So I couldn't agree with you more.

Mr. Gilles Bisson: In that expansion, are you in favour of private-public partnerships in doing that?

Mr. Peter Smith: Let me speak as a business person as well. I'm prepared to look at any reasonable way in which to finance projects. That is one of a number of options. Most of the expansion of GO Transit has been through capital dollars provided by the provincial government, the federal government and the municipalities. The alternate financing and procurement technique is being looked at now. The board is looking at it, and obviously the government is in terms of Infrastructure Ontario. It is an option.

Mr. Gilles Bisson: Are you aware at all of the issues in regard to trackage for Ontario Northland coming into Union Station? Is that something you're aware of?

Mr. Peter Smith: Not specifically with Ontario Northland, but I'm certainly aware of all of the issues of coming into Union Station. It's the core of our system; it's the hub; it's the gateway. I would assert that it's the gateway to Canada. It serves more people in a day than Pearson airport does.

The capacity issue at Union Station is at the top of our concerns. It is also near the very top of the projects that we're working on, and we currently are doing the expansion of the tracks. We're changing the switching system in and around Union Station. In fact, Metrolinx will move its headquarters into Union Station, I think, in January 2013.

Mr. Gilles Bisson: That's a fairly expensive item, the moving of those head offices. What's the ticket on that?

Mr. Peter Smith: Off the top, I couldn't tell you, but I know we looked at the business case and it was cheaper than continuing to rent in the current building we're in.

Mr. Gilles Bisson: I just can't remember: When are they looking at starting renovations there?

Mr. Peter Smith: We're in the final negotiations now on the design. I think we're starting probably next year. We're introducing a new pathway, the York path, the west path. We're working on a new atrium roof. That contract has already been signed.

Mr. Gilles Bisson: How much time do I have?

The Chair (Mr. Ernie Hardeman): You have about four minutes.

Mr. Gilles Bisson: Just on the ONR thing, to bring you up to date, because you may never get lobbied on this one: Ontario Northland, as you know, services Moosonee down to Toronto.

Mr. Peter Smith: I've taken it several times to Moosonee.

Mr. Gilles Bisson: The issue is that it never gets into Toronto on time. A big part of the problem is trying to get a time to get the train into Union Station. One of the things that is extremely frustrating is that whole issue of how that person gets on the train, expects to be in Toronto at a certain time and can't get in because of the connection into Union Station. That's certainly something that has people just hopping mad, to say the least. I just thought I'd put that out there.

Mr. Peter Smith: If I could just briefly comment on that: Anyone who knows me knows that in my years on GO Transit and now on Metrolinx, I am a champion for the redevelopment of Union Station so that it functions as it should, which is as a transportation hub for the greater Toronto area, the province and, as I said, as a gateway to the country.

Mr. Gilles Bisson: That's it. Thanks.

The Chair (Mr. Ernie Hardeman): Thank you for your presentation this morning. We managed to get through in record time. Obviously your explanations must be very effective. Thank you very much for coming in, and we wish you well.

NICHOLAS MUTTON

Review of intended appointment, selected by third party: Nicholas Mutton, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): Our second interview this morning is Nicholas Mutton. He's an appointee as a member of Metrolinx.

As with the previous member interviewed, we will ask if you wish to make an opening statement, and at that point, we will start the questioning this time with the opposition. We will rotate, and each has 10 minutes. Hopefully, at the end of half an hour, we will have our interview completed. So with that, the floor is yours.

0900

Mr. Nicholas Mutton: I would like to make some opening remarks, if I may. Thank you, Mr. Chairman and members of the committee. Many thanks for the opportunity to speak to you today in pursuit of an appointment to the board of Metrolinx, and to continue as the chair of the customer service committee, a position I consider a privilege and a personal commitment.

I am currently the executive vice-president of Four Seasons Hotels and Resorts, for whom I have worked for nearly 30 years, first as a manager of individual properties and later managing multiple properties across the Americas.

My entire career has been spent in the pursuit of customer service in ever more complex business situations and scope. I spent my first 24 years with Four Seasons Hotels and Resorts, running hotels from the operations side of the business, creating an ever-improving customer experience, and for many years operated our two largest hotels in Chicago, employing over 1,200 employees.

For the last six years, I have joined the management committee of Four Seasons, looking after the people and culture side of the business, worldwide—now 36,000 employees in 35 countries.

I am proud to say that our company has received recognition as one of Canada's 10 Most Admired Corporate Cultures, has been in the top tier of Fortune's Best Companies to Work For for 11 straight years, and has been recognized as the employer of choice in many countries around the world, as well as being recognized as the best luxury hotel company by J.D. Power and Associates, among others.

These accolades stem from our firm belief in the golden rule, and in operating to the highest levels of ethical, transparent, fair and accountable behaviour in all of our dealings, whether with business partners, employees, suppliers or customers.

Hotels, especially luxury hotels, might appear glamorous and elitist to the outside world, but the delivery of a precise, reliable, timely product is actually dependent on the co-ordinated activities of many line employees working largely unsupervised over a 24-hour, 365-day time frame.

Hotels create customer experiences mainly through "heart of house" activities; in fact, two thirds of our staff will never deliver direct guest service. Those activities include a sophisticated engineering and security function, housekeeping and cleaning, and kitchen production and stewarding, among many other support services.

It's the morale, commitment, training and care demonstrated by all employees, whether front of house or heart of house which grants us our reputation and therefore ensures our business model. We operate in a highly competitive environment, and our defining customer value is anticipatory, caring and professional service.

A highly engaged workforce also enhances productivity and timely service, reduces absenteeism, sick time, petty theft and careless damage—many strong business

reasons to focus on the employee experience so that they can focus on the customer experience.

Customer response is also tied to their individual minute-by-minute experiences, which need to be constantly monitored and refined. We at Metrolinx need to better understand the motivation of our riders and therefore how to expand our appeal to broaden our user base. We need to hear the voice of the customer loud and clear to inform all the decisions that are made, whether operational or in capital allocation. Excellent performance will result in a stronger reputation and therefore a greater share of the travelling public.

I hope to assist Metrolinx, and particularly GO transit, to evolve an already high-functioning organization into a truly customer-focused, efficient organization looking to enhance its appeal and to grow ridership over the next many years.

Thank you for allowing me to make these introductory remarks. I am delighted to be considered for this public service.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. Mr. Wilson.

Mr. Jim Wilson: Thank you, Mr. Mutton, for appearing this morning and for continuing to serve on the Metrolinx board. I don't have too many questions. I guess I just have a general question in terms of what you think are the most important challenges that Metrolinx now faces in achieving its goals.

Mr. Nicholas Mutton: I'm a neophyte. I am learning rapidly about the issues surrounding this newly formed board. I see it as extremely complex—very large amounts of money being allocated. My particular interest is that there's transparency, that we are clear and open about how we make decisions and that there's a vibrant discussion around all of the considerations that we have in front of us.

And I find that to be the case. The board has been very well informed, or has been allowed to have these conversations in open discussion, and we are learning very quickly what the issues are and how to resolve them.

Mr. Jim Wilson: How long have you been on the board? Since it was formed in—

Mr. Nicholas Mutton: In May. And there's a transition board.

Mr. Jim Wilson: Do you have any political affiliations? Are you a member of any political party?

Mr. Nicholas Mutton: I'm not, no.

Mr. Jim Wilson: Good man.

The Chair (Mr. Ernie Hardeman): I'm not sure that that's the appropriate determination.

Mr. Jim Wilson: Just kidding. Thank you for serving. No further questions.

The Chair (Mr. Ernie Hardeman): Thank you very much. Mr. Tabuns.

Mr. Peter Tabuns: Mr. Mutton, thank you for coming in this morning and for being willing to stand for this board. A few questions: Do you support or oppose the alternative financing system, or public-private partnerships?

Mr. Nicholas Mutton: I liked Mr. Smith's response. I think there's an appropriate time for such things, but they need to be very carefully studied and considered.

As you can tell from my accent, I'm from the UK, and we've seen good response and bad results from that exact public-private partnership issue. So I do think it needs to be very, very carefully approached from the legal, organizational and financial sides. I think it's possible, but I do think we need to be very cautious as we go forward.

Mr. Peter Tabuns: So being from the UK, you had the experience of dealing with privatized rail in the UK. What was your analysis of what went wrong then?

Mr. Nicholas Mutton: It didn't all go wrong. I've taken the rail there many, many times, and in fact it can be very good. I haven't studied it; it has not been an area of my consideration previously, but that's a good question. I think perhaps we should study it and make sure we don't repeat those mistakes.

Mr. Peter Tabuns: In what circumstances do you see public-private partnerships as useful in terms of financing, rail expansion and transit expansion?

Mr. Nicholas Mutton: I think it has to be a very focused and localized decision in certain areas, where there's predictability and a clear potential for a shared responsibility, but those are rare. I'm not sure, as I said before, that we can do it without a great deal of concern and consideration.

Mr. Peter Tabuns: And what do you see as the pitfalls? If you're talking about having to look out for things, what are the obstacles and difficulties that present themselves when one takes that route?

Mr. Nicholas Mutton: It can't be that financial gain takes precedence over customer service or reliability and frequency. Those things have to be absolutes, and financial gain can only follow. So how the deals are structured and how that's achieved is paramount.

Mr. Peter Tabuns: As you're probably aware, there's some controversy in the west end of Toronto about the expansion of the transit rail system, and in particular the method of powering those trains, whether they'd be electrically powered or diesel-powered. Do you have an opinion on this?

Mr. Nicholas Mutton: You know, there's a finite amount of financial capacity or ability to pay for electrification, and I think the study that's under way will sort of identify what those concerns are. It would be a great bonus if we could have electrification throughout the system or on some lines.

One would think that the main issue here is to get cars off the road and to make our transportation system work for the future of the whole region as opposed to picking one over another, if it's going to limit our ability to grow that transportation.

I do think the study is timely; it's well-staffed. We've been allowed to understand what has been demanded of that group and seen the list of the people and, in fact, know some of the people who are on it. I'm very confident that we'll get some very good advice from that group toward the end of the year next year.

0910

Mr. Peter Tabuns: Do you support having GO Transit actually provide the Pearson-Union link? From my understanding, it's about two kilometres worth of track that has to be built off of existing GO lines as a spur into Pearson airport.

Mr. Nicholas Mutton: Honestly, I'm not aware of that issue.

Mr. Peter Tabuns: Transportation and transit plans in the GTA are driven by development, and certainly, the lower the density, the tougher it is to make transit systems work. Is it your intention as a member of the board to have the board keep an eye on what goes on with development in the GTA and speak out about developments that may be problematic, financially and otherwise, for Metrolinx to service the residents of those developments?

Mr. Nicholas Mutton: We have some very good advice for the board from professionals in Metrolinx and from members of the board about development and the future of the region. It's a fascinating area. It is a bit of a "chicken and egg" situation, as we were talking about earlier. Where do you put your money in order to advance development versus satisfy an existing demand?

It's my judgment that our knowledge about planning and future planning needs for the region is really well advanced, and we're in touch with and listening to planners from around the region. It's an absolutely fascinating area; it's something of interest to me, and I think we're well represented there.

Mr. Peter Tabuns: You've been on the board now for how long?

Mr. Nicholas Mutton: I was on the transition board in May and then the full board since July.

Mr. Peter Tabuns: That's not a long time.

Mr. Nicholas Mutton: No.

Mr. Peter Tabuns: What's the most difficult issue you've been dealing with since you've gotten on that board?

Mr. Nicholas Mutton: My interest is customer service and I chair the customer service committee. I'm very pleased with GO's approach to customer service and the professional staff that they have, but they need to have a stronger voice for the customer. I know their intent is to create a passenger charter for all of our riders, to set up a public demonstration of key performance indicators around quality, reliability and frequency, and to get much closer to the response of riders to issues through quarterly surveys that previously were done only every several years. So I think we've already started down a road of a much greater understanding of customer response and need that we can now form policy around and change procedures so that we're responsive to it. Customer service isn't just about the employees or even the service; it's also about decisions around capital investment, reliability, tracks and switches, snow removal and all kinds of other issues that are well beyond just the employee.

Mr. Peter Tabuns: And could you tell me again what drew you into this board? I note the other boards you sit on—some of my favourite boards. What is it about Metrolinx and regional transportation that interested you?

Mr. Nicholas Mutton: Well, I worked with Rob Prichard; he was chair of the board of the Four Seasons hotels. So I knew him both professionally and personally over the years. I've wanted to take on a public service opportunity for some time but have not been approached. This opportunity came out of the blue. Customer service is certainly an area for my interest and expertise, and I was prevailed upon to join. I'm delighted I did. It's a fascinating board. I'm working with some really interesting, informed and professional people. So, yes, it was through Rob Prichard.

Mr. Peter Tabuns: I don't have further questions, Chair.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation and being here this morning. That does conclude the—

Mr. Michael A. Brown: What about us?

The Chair (Mr. Ernie Hardeman): Oh, sorry. We have one more. My mind is still on the last one that we started with the government side. The government caucus has yet to question.

Mr. Michael A. Brown: Thank you, Mr. Chair. I'm not going to be too long, Mr. Mutton.

I am, and I think we on the government side are, particularly impressed with the inspiration to have you recruited to the board by Mr. Prichard, with your strong customer service focus. We note, and I guess everyone in the room notes, your strong work in the hospitality sector, which I think is perfect in many ways for a company like Metrolinx.

I just want to indicate to you that we think not only your skill set but the inspiration of recruiting you are great, and that we will be supporting your appointment today.

If you have anything else you might want to say about customer service, it's your time.

Mr. Nicholas Mutton: I could go on all day, if you'd like.

Mr. Michael A. Brown: You've got eight minutes.

The Chair (Mr. Ernie Hardeman): We appreciate that offer, but we have to keep it within the time allotted to Mr. Brown.

Mr. Nicholas Mutton: I have also had several years' experience in customer service and quality with Mount Sinai Hospital. People are happy to check into, and generally check out of, our hotels. A hospital isn't always the same, so a rather different approach to customer service and satisfaction, and quality control, which in some ways has led me to better understand what GO Transit and Metrolinx are about. This isn't just creating for people an experience that is on the positive side; it's also dealing with issues that are of absolute necessity and not always with a happy outcome. So it has been instructional for me as well. I hope to bring not just the fun side of the business experience but also to understand that this

is a serious business of safety and of truly caring for the public. I just thought I would mention that as well.

Mr. Michael A. Brown: Thank you.

The Chair (Mr. Ernie Hardeman): That now concludes the interview. Thank you very much for being here this morning, and good luck in your future endeavours.

JOSEPH HALSTEAD

Review of intended appointment, selected by official opposition and third party: Joseph Halstead, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): Our third interview this morning is with Joseph Halstead, intended appointee as a member to Metrolinx.

As with the previous ones, we will provide you with the opportunity to make an opening statement if you wish. At that time, we will have some questions from around the table. This time, we'll start with the third party. Hopefully, I will get around the whole circle before I conclude the interview. With that, we ask you to make your presentation.

Mr. Joseph Halstead: Thank you, Mr. Chair and members of the committee, for your invitation to be here this morning. I deem it a privilege to be considered for a position on the board of Metrolinx.

Mr. Chairman and members of the committee, I am passionate about public service. I estimate that about 90% of the work I have done in my working life is in the realm of public service, and the remaining 10% in terms of community involvement. I cannot think of a single day in over 35 years of working at the province or at the city that I did not want to go to work. I can assure you that I will bring the same passion and dedication to the Metrolinx board, should I be appointed, as I now do to the other boards on which I sit.

By way of background, you're aware that I served for 24 years in the government of Ontario, working in six different ministries at senior levels, including Management Board of Cabinet, health and government services. I held the ranks of assistant deputy minister and acting deputy minister before assuming the role of Commissioner of Economic Development, Culture and Tourism for the city of Toronto.

I am pleased to say that during my time at the province, I had the privilege of working under all political parties when they were in charge of the government. All three Premiers have appointed me to agencies or task forces when they were in charge of the government. During my time as commissioner responsible for economic development, culture and tourism for Toronto, I was one of the executives charged with the responsibility to merge and integrate seven municipalities into a single entity, the new amalgamated city of Toronto. I see many parallels between that work and the current process of merging GO Transit with the new Metrolinx. I believe that I can bring some very valuable insights to that process.

0920

My prime focus at the city was to develop ideas and tools to attract businesses and investment to Toronto. As we talked to businesses, both nationally and internationally, it became apparent that in addition to a skilled and educated workforce, the most important requirement is a good transit system to move people efficiently through the region of the GTA in a seamless manner; a transit system that is reliable and cost-effective. In short, I'm saying that if we get it right, the work of Metrolinx is crucial to the economy of the greater Golden Horseshoe.

Just a few additional points: I have served on many boards, including Ontario Place Corp., the Toronto Community Foundation, the Interprovincial Lottery Corp. and the Toronto Economic Development Corp.. All these experiences, along with my work with the Olympic bids, the Pope's visit, the Pan American Games bid and the annual Caribana festival, of which I am chair, makes me an asset to the broad planning and implementation challenges facing the board of Metrolinx. It requires experience and thoughtful consideration to move large volumes of people logistically around the region.

Mr. Chair and members of this committee, I believe that I would bring credibility and value to the board of Metrolinx, should I be considered. Thank you.

The Chair (Mr. Ernie Hardeman): Thank you very much. We'll begin with the third party.

Mr. Peter Tabuns: Joe, good morning. Thank you for being here.

Mr. Joseph Halstead: Good morning, sir. Good to see you again.

Mr. Peter Tabuns: Likewise.

Joe, I'd like to ask you the question I asked Mr. Mutton. AFP and public-private partnerships: Do you support those methods of financing transit, do you oppose them and can you give me your reasons?

Mr. Joseph Halstead: I, like Mr. Mutton, am not opposed to them. I think they're valuable options available to any organization that seeks to finance its business, especially one like Metrolinx, which will have to find considerable financing down the road. It is an option, but it must be carefully considered.

I agree: I think it cannot be done at the expense, in this case, of the public good. At the end of the day, I would like to see the various analyses: all financed by the private sector, all financed on a PPP basis or financed through government investment. Those are options, and we must consider them very carefully.

Mr. Peter Tabuns: I had an opportunity to sit on the board of Toronto District Heating Corp. in the past, so I had an education in interesting financing. The reality is that in a public-private partnership, when the financing is provided, it's generally at a higher rate of interest than is available to governments that borrow directly, unless it puts upward pressure on the cost structure. Given that reality, why do you see public-private partnerships as an option?

Mr. Joseph Halstead: Well, all financing comes with some cost.

Mr. Peter Tabuns: I agree.

Mr. Joseph Halstead: In government financing, there's a liability on the government, a contingent liability that hangs out for a long time and affects your ratings. So there are challenges either way. I just think that there's a role and a place for it. I'm not advocating it in any way, shape or form, on this one in particular, but I'm just saying, do not discount your options before you look at the analysis and determine which is in your best interest. That's all I would say at this point.

Mr. Peter Tabuns: I'll go into another, but related, area. Do you believe in the private operation of all or part of the regional transit system?

Mr. Joseph Halstead: Well, it is firstly a public system, and it is there to serve the public. Anything that takes away from that cannot be good. My first order of business would suggest we look at how it serves and fits with the mandate of the public system, and if it works, great. If it doesn't, no, I wouldn't.

Mr. Peter Tabuns: The question of the commuter trains in the west end of Toronto, the controversy over electrification versus diesel trains—I know that there's only so much capital in the world, but I also know that there are long-term trends in the cost of energy. I don't know if you've had a chance to read Mr. Rubin's book, *Why Your World Is About To Get a Whole Lot Smaller*, and his predictions about the direction for oil prices over the next few decades. In your analysis of that particular proposal, will you be bringing to this board the idea that they have to look at the long-term trends in the cost of energy?

Mr. Joseph Halstead: This is still a work in progress. As you know, we have a committee at work looking at that very question, all aspects of electrification, and my sense is that I wouldn't want to prejudge what they're likely to tell us. It's a very credible committee and I would simply hold my options until I hear what they have to say. You can bet it's going to be a very crucial decision for the board.

Mr. Peter Tabuns: I have no doubt of that. Are you willing to pursue with that committee that question of long-term trends in energy costs, and its implications for whatever investment option they put on the table?

Mr. Joseph Halstead: That's a question that must be asked. I would imagine our staff and the committee would give us some insights into that, but at the end of the day to have concluded the debate and not asked that question would be incomplete. So I would suggest to you that it's a question that must be asked.

Mr. Peter Tabuns: I'd asked as well about sprawl. When the growth plan for the greater Golden Horseshoe was presented in the Legislature, there were a variety of critics. Professor Mark Winfield of the Pembina Institute had some fairly strong comments that he didn't see that the plan would make a difference, as opposed to business as usual. The Neptis Foundation that does a lot of urban form analysis in Ontario had similar conclusions.

You don't plan urban shape and density, but you have to deal with the consequences of those decisions. Do you

see it as the responsibility of your board to make government aware that particular planning decisions may be problematic in terms of mass transit?

Mr. Joseph Halstead: Yes, it is reasonable for us, as a mover of people, to provide information to government and the public as to how best these decisions can be taken. I would have no difficulty in saying that part of our role would be to analyze growth patterns, see what services we're providing and make recommendations as to how best to address them.

Mr. Peter Tabuns: What do you see as the biggest, the most difficult issue that your board's going to have to wrestle with in the next year to two years?

Mr. Joseph Halstead: We're still very much in the planning phase, but there are a number of issues on the table for us, and we're dealing with them; delivering on the big five projects is clearly one. I agree with the previous speaker, Mr. Mutton, about the need to integrate customer service and hear the voice of the customer in what we do. And financing down the line—making a decision on that in two or three years is critical. So there are a number of priorities out there for us.

0930

Mr. Peter Tabuns: Joe, thank you very much. I appreciate the testimony.

Mr. Joseph Halstead: Thank you very much, Mr. Tabuns.

The Chair (Mr. Ernie Hardeman): The government?

Mr. Michael A. Brown: Thank you, Mr. Halstead. We appreciate you putting your name forward. I was just quickly looking over your resumé: the executive lead for the World Youth Day conference and papal visit; executive lead for the 2008 Olympic bid by the city of Toronto; negotiating committee to bring the Raptors basketball team to Toronto; the 2015 Pan American Games bid committee. I want to stop there and let you tell us a little bit about your involvement with that one.

Mr. Joseph Halstead: You've talking about the Pan Am Games bid?

Mr. Michael A. Brown: The bid.

Mr. Joseph Halstead: That was finally redemption for us as a province and as a city, having the experience of going through the previous bids. It was a very exciting process. We had a very good team, led by the former Premier, David Peterson, and it was one of trying to simply convince the Pan American countries that Canada, and Toronto in particular, was the right place for them to be with their athletes, where they can best achieve their best performances. It was, candidly, sir, a very exciting process we went through and the result was the right one.

Mr. Michael A. Brown: I don't have further questions, but I just want to indicate to you, as I have to other people who have put their names forward to be members of this board, our appreciation for you doing that, and recognize a skill set and a devotion to public service that is a credit to you and to the province.

Mr. Joseph Halstead: Thank you very much, sir.

The Chair (Mr. Ernie Hardeman): The opposition: Mr. Klees.

Mr. Frank Klees: Mr. Halstead, thank you for being willing, in addition to all these other things that you're doing, to serve on this board.

I do have a question for you regarding how you see the role of Metrolinx vis-à-vis the provincial government. I think Mr. Tabuns touched on this somewhat in terms of the overall planning, the planning policy of the provincial government, that obviously implicates gridlock, our ability to move around. You have been handed now a plan for implementation, and what triggers this is the Pan Am Games. One of the first articles that I read was that now, as a result of having been awarded these games, there are certain projects related to transit that should now be prioritized, leapfrogged over others because this new announcement now changes the landscape.

I'd be interested in your views of how you balance off long-term planning based on good, sound planning principles and then the reaction to announcements that come along. What is your role as a director of Metrolinx to ensure that sound planning principles are followed and that you're not falling back into the crisis management role that government and agencies typically succumb to?

Mr. Joseph Halstead: Mr. Klees, I'm relatively new to the Metrolinx GO Transit operations, but the question of the Pan American Games did come up. We did have a preliminary discussion at our last board meeting about how this could dovetail or how it would affect what we have already planned. Again, these are early days; there's lots of work to be done, and staff needs to come back and give us their advice. But from what we were able to ascertain, the work already being planned is adequate, by and large, to deal with the requirements of the Pan American Games.

The minor changes that might be required, either in time frame or new connections, will not be that significant to disrupt the already planned activities. Whether it's Scarborough or Finch, getting out to the U of T site or the HOV highway to Hamilton, none of those are going to be major disruptions to the plans we have already got in place.

I appreciate the point that we have to think about it; we have to make sure that we hold our plan together and not be getting into crisis management because of this particular announcement.

Mr. Frank Klees: What's encouraging to me about the composition of this board is the fact that there are very competent, very experienced people sitting around the table having assumed this enormous responsibility. There's no question in my mind that your challenge is one of the top priorities in this province in terms of ensuring that we get this right in terms of the long-term planning of our transportation infrastructure.

I'm hoping that we can, in fact, presume and count on the independence that you have. I made reference to this in my questioning of Mr. Smith earlier, the fact that we really do need you to ensure that you can withstand whatever pressure may come. Whether it's because of an event that we're welcoming to this province, we can't

have that distort the focus because the implications of that are long-term. You divert half a billion dollars from one project, and the implications, then, for the next two decades can be significant, and we need to count on you not to compromise them.

Mr. Joseph Halstead: First of all, let me share your view that this is an extremely strong, independent board. I'm absolutely impressed with every member on this board. I've never sat on a board—being candid with you—with this depth and breadth of knowledge and experience. That's absolutely the case.

It is our obligation to be independent. We owe it to everyone—the people, the government—to be strong and to do what is right. I can speak for myself, and I submit that, from what I've seen of the other directors, they'll be of the same mind. They will do what is right, and they will think through carefully, as I have seen at the table, people just simply saying what they think and holding their positions. We are a board. We come together, but in the end people are going to be heard, and they're not shy about doing that.

Mr. Frank Klees: Has Metrolinx had any involvement in the procurement process of the smart card?

Mr. Joseph Halstead: I am not aware of what involvement they may or may not have had. Sorry, Mr. Klees, I've not been there that long.

Mr. Frank Klees: Ultimately, you'll have responsibility for overseeing its implementation long-term and integration to the process. From my recollection, it's a project that is—first of all, I think we need to accelerate the implementation of that project, but there were a number of options, as I recall, in terms of private sector involvement, in terms of where it's sourced, and it's a very competitive field. Given the challenges that the current government seems to have in terms of discerning how contracts should be tendered and how they should be awarded, can I suggest to you that it may be something that your board would want to look into sooner than later? Because at the end of the day, you'll have to answer the questions about it in terms of whether it was sourced properly and whether the people who are responsible for delivering and implementing the technology were in fact the best candidates.

0940

So I leave that with you. I think it's projects like that that need oversight, and I would ask you this—how much time do I have left?

The Chair (Mr. Ernie Hardeman): You have one more minute left.

Mr. Frank Klees: One more minute; I don't have time. So let me ask you this question: Has Metrolinx done any studies to determine the implications of HST on its organization, its services and its customers over the next number of years?

Mr. Joseph Halstead: I'm sorry. I don't have the answer to that.

Mr. Frank Klees: The implementation of HST will have, obviously, implications to your undertakings, in terms of projects and so on.

Mr. Joseph Halstead: Yes, I understand. I simply cannot answer that right now because I just don't know. I would be surprised if they have not, certainly at the staff level, been looking at this, but that is not a matter that has come before the board at this point.

Mr. Frank Klees: I would be interested in receiving some information on that if you have the opportunity to perhaps look into that for me.

Mr. Joseph Halstead: I'll certainly pass it on.

Mr. Frank Klees: Thank you so much.

The Chair (Mr. Ernie Hardeman): Thank you very much for coming in this morning and for being part of the process. Thank you for coming forward to assist with this big challenge.

Mr. Joseph Halstead: Thank you very much.

The Chair (Mr. Ernie Hardeman): As the committee is aware, the bells have been ringing for some time. I think we can hear the presentation, if you wish, prior to the voting, but we have seven minutes to get into the House.

Mr. Michael A. Brown: Mr. Chair, if I might make a suggestion, if it's suitable to all the members of the committee, that we might informally pair so we can make sure that the presenter in front of us has the opportunity to do so uninterrupted, and we can do this government business, and opposition business, for that matter, in a way that makes sense to both us and the person making the application. So we could informally pair, which wouldn't change the rules upstairs or in terms of the vote, and we could just continue on.

Mr. Frank Klees: We haven't won in two and a half years in this place, so that's fine with me.

The Chair (Mr. Ernie Hardeman): I'm not sure it's fine for the process, because I think we have an obligation to recess for the vote upstairs.

Mr. Frank Klees: Exercise your power, Chair.

Mr. Michael A. Brown: I'm not aware of that. I think if the committee decided to informally do it, we could do it.

The Chair (Mr. Ernie Hardeman): If it's with the unanimous consent of the committee, we will ask the last person to make his presentation and we will continue on.

Mr. Frank Klees: It's unanimous.

The Chair (Mr. Ernie Hardeman): Okay.

Mrs. Liz Sandals: Just to be clear, if there are four people there and four people here, I should probably get up and leave—

Mr. Frank Klees: Yes.

Mrs. Liz Sandals: —because I have no one to pair with. So I'm not being rude; I'm just unpaired.

Mr. Frank Klees: Actually, there are two people here, so we should actually have three of you leave.

Mrs. Liz Sandals: That's true. If Jim isn't here, she needs to come. If Jim isn't here, I'm taking her with me.

Mr. Frank Klees: Or you can all stay here.

The Chair (Mr. Ernie Hardeman): If I could call the meeting back to order, and I would suggest that the only important person here is the gentleman sitting at the end of the table who is going to make a presentation.

Mr. Michael A. Brown: Hear, hear.

STEPHEN SMITH

Review of intended appointment, selected by third party: Stephen John Smith, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): With that, we do have Stephen John Smith, who is an intended appointee for Metrolinx. We welcome you, Mr. Smith, to the meeting this morning.

As with the previous presenters, we will provide you with an opportunity for opening remarks if you wish to do so. At the end of that, we will have a rotation of questions that the committee may wish to ask you. Those questions will start with the government caucus, just so the caucus will be ready. With that, we ask you to proceed.

Mr. Stephen Smith: Thank you very much, Mr. Chair. Let me say how honoured I am to be nominated to be a member of the board of directors of Metrolinx and how delighted I am to be here before you this morning. I'm currently chair of the audit and finance committee at Metrolinx. Prior to my appointment to the Metrolinx board, I was on the board of GO Transit for over three years, where I was most recently vice-chairman and chair of the audit committee. I'm currently chairman, president and co-founder of First National Financial LP, which is Canada's largest non-bank mortgage lender with over \$45 billion of mortgages under administration. With over 500 employees across the country, First National lends in excess of \$12 billion of mortgages to Canadians annually. In addition, I'm a member of the board of directors of the Dominion of Canada General Insurance Company and the Empire Life Insurance Company; I serve on the human resources and investment committees of both these organizations. In the not-for-profit sector, I'm a member of the advisory council of the Royal Conservatory of Music and a member of the board of directors of the Historica-Dominion Institute.

I was born in Ottawa but have lived in Toronto for the past 30 years. I hold a B.Sc. in electrical engineering from Queen's University and an M.Sc. in economics from the London School of Economics. I'm also a graduate of the institute of corporate directors program from the Rotman School of Business at the University of Toronto. I believe my background and experience makes me well qualified for this position. I have a deep understanding of finance; as well, an appreciation of the requisite corporate governing structures appropriate for an organization of the size and scale of Metrolinx.

In addition, I have had a long-standing interest in public transit. At the beginning of my career I worked for Canadian Pacific undertaking various transportation studies, including electrification, and then at Hawker Siddeley Canada, which at the time owned the Bombardier plant in Thunder Bay and was the original manufacturer of the TTC streetcars and the GO Transit bi-level cars.

I've been extremely fortunate to be born and raised in Ontario. Being given this opportunity to serve on the board of directors of Metrolinx, I hope to be able to give

back to the society that has given me so many advantages. I'd be delighted to take some questions.

The Chair (Mr. Ernie Hardeman): Thank you very much. With that, we'll go to the government caucus.

Mr. Michael A. Brown: You are no relation to the first Mr. Smith—

Mr. Stephen Smith: No relation whatsoever.

Mr. Michael A. Brown: With a name like Brown, you get to ask that question.

I just want to say that the government is extraordinarily pleased that you've put your name forward for this board. Your skill set complements those of other folks who have been before us and are to come before us, and we really appreciate you taking your time for public service in the province of Ontario.

Mr. Stephen Smith: Thank you very much. I'd like to echo the comments of my previous nominees in that this is one of the most exceptional boards that I've ever served on. Most of the people here are exceptionally strong. They have a diverse skill set and they can bring various talents to bear in their roles.

The Chair (Mr. Ernie Hardeman): With that, the official opposition.

Mr. Frank Klees: Mr. Smith, again, thank you for being willing to serve.

I'd like to talk a bit about funding. Obviously this is where your expertise lies. The province has a \$25-billion deficit, and probably more—challenging times. We have an infrastructure deficit on top of that. The discussion about how we fund whatever the plans are that ultimately are settled on is the real challenge. None of this is going to happen if we don't find a creative solution to how we fund getting this infrastructure in place. I'd be interested in your views as to what it's going to take to make this happen.

I'd also be interested in your assessment of the time frame. One of the things that was frustrating to me when we got this great announcement about what has to be done by way of putting in place various transit programs, but the funding question was going to be answered down the road somewhere, which means that we've got all of this time where nothing is happening or very little is happening, and we're losing ground all the time.

0950

My background is business as well. I'm ever-frustrated with the glacial speed with which government makes decisions. In my mind, this was a private sector company saying, "We are going to take on these projects." We've identified them. It's not going to take them three years to figure out how they're going to fund this. I'm encouraged by the fact that you bring your private sector experience to the table here, and I'm hoping that you're going to be able to help us and convince—and I'd put it this way—the provincial government, which will make the final decision that your recommendations should be implemented.

So, the bottom line is: I'd be interested in your view as to what it's going to take to fund this multi-billion-dollar capital infrastructure project. In terms of the time frame,

is there any way, in your view, that that can be accelerated?

Mr. Stephen Smith: I think those are excellent questions and something certainly I've given a lot of thought to. These announcements are very ambitious. They involve not only capital costs but they also involve operating costs. In many ways, the operating costs are much more significant than the capital costs.

There has been the initial announcement and the initial promise. Part of the Metrolinx mandate—and something that we spent a lot of time on at the board—is that we are to deliver by the end of 2013 an investment strategy. Part of that investment strategy—our CEO, Rob Prichard, recently had spoken about this, and I think we have to start to look at other alternatives.

I think this is an ongoing conversation. We have until 2013, and there are a lot of diverse groups within the province that have an interest or not an interest. We have not spent as much on public transit as we should.

I look at my role and the role of the Metrolinx board as: I'm not thinking four or five years out; I'm trying to think in terms of 50 or 100 years out. Where are we going to be as a province and as a regional municipality in 50 years or 100 years? We are the third- or fourth-largest city in the country, and in a way our infrastructure has lagged behind that.

It's a challenging issue, Mr. Klees. I, as much as anyone, am aware of a \$25-billion deficit. That's a tremendous burden on us. It's going to be a burden on our children and it's going to be a burden on our grandchildren. How do we deal with that? A role of the board, and we're going to be engaged in that—and we have four years to do that—is to look at other ways to finance it.

Do I have a solution for you right now—what I'm going to do or what we can do at the board? No, we don't, because I think it's a tough problem. I think the solutions we will come up with will be solutions we'll get by engaging in debate with society as a whole. I think it's a bit of a role of the Metrolinx board to start to talk about alternatives, to start looking at different ways of financing things.

It doesn't take too much imagination. You get some fairly radical proposals, going as far as congestion taxes, as they've done in London. I'm not too sure whether that's something that would be acceptable in the province of Ontario and the city of Toronto in our environment, but certainly I think it's important to keep an open mind with respect to all alternative forms of revenue generation.

Mr. Frank Klees: Do I have some more time?

The Chair (Mr. Ernie Hardeman): Yes. You have about three more minutes.

Mr. Frank Klees: Your financial institution: Have you done any business with the province of Ontario?

Mr. Stephen Smith: I think I have, yes.

Mr. Frank Klees: What was the nature of those?

Mr. Stephen Smith: About 10 years ago, I think we purchased some land leases. If you remember, there was a program up in Brampton about 40 years ago, and there

were some land leases left over. I think there was a competitive tender, and we purchased about \$10 million of land leases from the province.

Mr. Frank Klees: Do you feel that there might be some opportunity down the road for your financial institution to play a role in some of the public-private—

Mr. Stephen Smith: Right. No, I don't think there would be a role for us. We're primarily a mortgage lender with residential-commercial. This wouldn't be in our area of expertise. I don't think we'd have any particular business interest here.

Mr. Frank Klees: You would not exclude a strong private sector participation?

Mr. Stephen Smith: No, I would not.

Mr. Frank Klees: Can you perhaps, for the benefit of some of my colleagues—and myself, of course—tell us why you feel the private sector may well play a major role in providing funding for this project?

Mr. Stephen Smith: Well, I don't think I have a preconceived notion that the private sector either should or should not play a major role. I think, when we look at financing for the programs we have, we have to look at all alternatives, and we have to keep an open mind. I don't think I have a preconception one way or the other as to a private sector or a public sector solution.

Mr. Frank Klees: Do you accept the argument that some will make that the reason you shouldn't have the private sector involved is that the private sector has to make a profit and governments can always borrow at cheaper rates than the private sector can? Do you buy in to that argument?

Mr. Stephen Smith: Certainly, when you look at the costs, when private sector puts a proposal together, their financing costs, on a theoretical basis, would be more expensive. But there are also hidden costs. If the government starts to borrow, it starts to increase the debt. That can have a marginal effect on your rating and potentially can increase costs.

I think I would get back, and it might be the flip side—I don't have a predisposition one way or the other. I think private sector solutions can be good in certain circumstances. I think there's a huge role. I think in public transit, in some way, and in a lot of public goods, there's a role for the public service too. So I would keep a very open mind, look at whatever solution came and pick the right solution that gave the best value to the taxpayers of Ontario.

Mr. Frank Klees: Thank you, and thank you again for being willing to serve in this capacity. Certainly you have our support.

Mr. Stephen Smith: Thank you very much, Mr. Klees.

The Chair (Mr. Ernie Hardeman): Mr. Tabuns?

Mr. Peter Tabuns: Mr. Smith, thank you for being here this morning.

From a very different angle—a number of my questions have already been asked—have you ever had to declare a conflict of interest in your role on the GO board?

Mr. Stephen Smith: I have not.

Mr. Peter Tabuns: And do you foresee having to declare one on the Metrolinx board?

Mr. Stephen Smith: No, I do not. As I mentioned, my business interests relate to mortgages, not public sector finance.

Mr. Peter Tabuns: Fair enough.

The question of private operation of all or part of a regional transit authority: Would you support the private operation of all or part of a regional transit system?

Mr. Stephen Smith: I'm agnostic on that issue. I would think it's what is in the best interests of the taxpayer. I would say I'm not ideologically opposed to a private sector operation, although I would argue that you have to look at it very, very carefully. But I'm neither opposed nor supportive.

Mr. Peter Tabuns: If you have to look at it very carefully, what are the obstacles or problems that you would be looking out for?

Mr. Stephen Smith: Well, I think it's often difficult to negotiate in the context of what is the contract that one enters into and what is the length of time. It's often very difficult to develop a contract that meets the needs. When you look at public-private sector partnerships where it may make sense, it has to be very, very focused.

But again, I think I would go to the same answer I gave to Mr. Klees, which was, let's see what is on the table and see what's available. Is it in the best interests of the stakeholders? If it is, I think one has to be open to it. I would think the Metrolinx board should be open to anything that could give benefits to the stakeholders and the taxpayers.

Mr. Peter Tabuns: Okay.

You mentioned, and I think it indicates your experience in working in this sector, that operating costs are a very significant matter—capital costs, obviously, but operating costs are of great consequence. What subsidy is now required to operate the system on a per ride, per passenger basis?

1000

Mr. Stephen Smith: You know, I don't know—well, let's see if I can figure that out. Just off the top of my head, I think our annual budget is about \$350 million. I think our subsidy this year ran to about \$55 million. So there's \$55 million, and there are 55 million passengers, so I guess that's about a dollar a ride.

Mr. Peter Tabuns: Okay. That's interesting.

Mr. Stephen Smith: I think there is an issue when you look at—I think there's been a lot written in the paper about it. When you look at the subsidies, we have one of the highest cost recovery ratios, I guess in the industrialized world, probably anywhere in the world, and it's very, very high.

We run a very efficient system. GO Transit is a good system; it's got good operators. It's something we should be very proud of, and we deliver great transportation to everyone in the province. The subsidy, though, is hugely high.

Mr. Peter Tabuns: And do you see—

Mr. Stephen Smith: Not the subsidy, I'm sorry. The cost recovery. The subsidy is quite low; the cost recovery is quite high.

Mr. Peter Tabuns: Do you see the current trajectory of urban form in the GTA as driving up that subsidy? Is that something that's been discussed at your board?

Mr. Stephen Smith: I think there would be a feeling that, given the initiatives that the province has introduced, we're probably going to see, over time, a lower cost recovery ratio.

It gets back to a little bit of a chicken-and-egg situation. We've introduced new programs to, for example, Guelph, Kitchener-Waterloo and down to the Niagara region to bring more people into the GO Transit route. Those are not as efficient as the other ones. So to the extent that we introduce more new services to engage more of the population in the greater Toronto and Hamilton area, I think we're going to have to subsidize the operations more.

Mr. Peter Tabuns: I don't have further questions. Thank you very much.

Mr. Stephen Smith: Thanks, Mr. Tabuns.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation—I didn't skip anyone this time, did I? But we thank you very much for your presentation—

Mr. Stephen Smith: Thanks very much, Mr. Chair.

The Chair (Mr. Ernie Hardeman):—and I congratulate you on putting your name forward.

That concludes the hearings this morning, so we now can proceed to the concurrences of the ones we heard this morning.

The first consideration will be Peter Reginald Smith, intended appointee as member and vice-chair of Metrolinx.

Mr. Michael A. Brown: Chair, I would move concurrence with the appointment of Peter Reginald Smith as member and vice-chair of Metrolinx.

The Chair (Mr. Ernie Hardeman): Thank you very much.

Mr. Michael A. Brown: Recorded vote.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Discussion? Any comments or questions?

Mr. Peter Tabuns: I'm just going to say that I wasn't here for the interview, so I don't believe that I can make an informed vote on that.

The Chair (Mr. Ernie Hardeman): Thank you. Any further discussion? If not, all those in favour of the motion?

Ayes

Brown, Johnson, Klees, Naqvi, Pendergast, Sandals.

The Chair (Mr. Ernie Hardeman): The motion is carried.

The second one is Nicholas Mutton, intended appointee as member of Metrolinx.

Mr. Michael A. Brown: Chair, I would move the appointment of Nicholas Mutton as a member of Metrolinx.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Any discussion, questions or comments? Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Mr. Chair. With no disrespect to any of those who have come forward—because I thought they answered the questions well—I disagree with the idea of public-private partnerships on a fundamental basis, and I don't believe that our board should countenance such approaches. On that basis, I couldn't support the applicants. It isn't a question of my judgment on their ability or their general moral fibre; it's a question of the direction of the transit system as a whole.

The Chair (Mr. Ernie Hardeman): Thank you. Any further comments?

Mr. Michael A. Brown: Mr. Chair, I'd just like to help my friend from Toronto and remind him that during the early 1990s, the rolling stock of GO Transit was sold to a company in the Bahamas and leased back, so that's creative financing at its best.

We'd be happy to move concurrence, having said that.

The Chair (Mr. Ernie Hardeman): We appreciate the history. Any questions or further comments on this concurrence?

Mr. Peter Tabuns: I'd just like to reply to Mr. Brown that there's a reason that a certain politician was discredited within our party and has moved on.

The Chair (Mr. Ernie Hardeman): Mr. Klees?

Mr. Frank Klees: I would just like to say that it's precisely because of the responses that we heard this morning from these applicants, that their minds are open to public-private partnerships. What's encouraging to me is that there seems not to be a predisposition that—I've heard is that the decisions they'll make will be in the public interest and that if a public-private partnership is in the public interest, they're willing to make that decision.

I think that one of the reasons we have real challenges in this province at many levels of government is that often decisions are made based on predisposition and that good, solid solutions are excluded from consideration because of a philosophical predisposition. So I'm encouraged by the independence that I've heard expressed and by the expertise, and I believe that our province will be well served.

The Chair (Mr. Ernie Hardeman): Thank you very much. Any further debate?

Mr. Michael A. Brown: Recorded vote.

Ayes

Brown, Johnson, Klees, Naqvi, Pendergast, Sandals.

Nays

Tabuns.

The Chair (Mr. Ernie Hardeman): The motion is carried.

The third concurrence is Joseph Halstead, intended appointee as a member of Metrolinx.

Mr. Michael A. Brown: Chair, I would move concurrence in the appointment of Joseph Halstead as a member of the Metrolinx board.

The Chair (Mr. Ernie Hardeman): The committee has heard the motion. Further debate?

Mr. Michael A. Brown: Recorded vote.

Ayes

Brown, Johnson, Klees, Naqvi, Pendergast, Sandals.

Nays

Tabuns.

The Chair (Mr. Ernie Hardeman): The motion is carried.

The last concurrence is Stephen John Smith, intended appointee as a member of Metrolinx.

Mr. Michael A. Brown: Mr. Chair, I would move concurrence in the appointment of Stephen John Smith as a member to the board of Metrolinx.

The Chair (Mr. Ernie Hardeman): The committee has heard the motion. Any questions or comments?

Mr. Michael A. Brown: Recorded vote.

Ayes

Brown, Johnson, Klees, Naqvi, Pendergast, Sandals.

Nays

Tabuns.

The Chair (Mr. Ernie Hardeman): The motion is carried.

That concludes the business of the interviews this morning and dealing with the intended appointees. Any other business for the committee from the members?

If not, before we adjourn, the next meeting will be at 8 a.m. next Tuesday. I would point out how early I have to start out, because this morning I arrived here at a quarter to 7, and then I was late getting down to the committee room. Maybe I should just sleep in the office all night so I can be here on time for an 8 o'clock appointment.

Mr. Peter Tabuns: So moved.

The Chair (Mr. Ernie Hardeman): We will try to be here. Again, I apologize for not being here right on the moment this morning, but with the indulgence of the committee, we've managed to get through the required appointments, and we appreciate that.

Thank you very much, and we will see you next week.

The committee adjourned at 1009.

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 1 December 2009

Mardi 1^{er} décembre 2009*The committee met at 0902 in committee room 1.*

The Chair (Mr. Ernie Hardeman): I call the meeting of the government agencies committee to order. Thank you all for being here.

SUBCOMMITTEE REPORT

The Chair (Mr. Ernie Hardeman): The first order of business is the adoption of the subcommittee report of Thursday, November 26. Do we have a motion to adopt the report?

Interjection.

The Chair (Mr. Ernie Hardeman): So moved.

Any discussion on the report? If not, all those in favour? Opposed? The motion is carried.

INTENDED APPOINTMENTS

DOUGLAS TURNBULL

Review of intended appointment, selected by third party: Douglas Turnbull, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): We'll go to today's appointment reviews. Our first interview today is Douglas Turnbull, intended appointee as a member of Metrolinx. Mr. Turnbull, if you'd come forward, the seat is yours.

You will be given the opportunity for opening remarks. We will then have a rotation of questions from the three parties at 10 minutes each, at the end of which, of course, we will conclude the interview. We will start with the official opposition in the questioning.

So with that, Mr. Turnbull, thank you very much for being here this morning, and the floor is yours.

Mr. Douglas Turnbull: Thank you, Mr. Chair, and members of this committee. I appreciate this opportunity to meet with you today and to answer your questions.

Let me begin by saying what a great privilege it is to be considered for appointment to the Metrolinx board of directors. I have spent a great deal of my career working with the public sector with governments of all political stripes across Canada, and I can say that in my experience, the work of the public sector, whether as part of the professional public service, elected representatives at all levels of government or the volunteer sector, is critically valuable to Canadians, but, ironically, grossly undervalued by many in the private sector. I do not share that

view. In my opinion, the work done by the public sector has a fundamental impact on the quality of life of all Canadians.

As you can see from my biography, I've spent my career in the investment banking industry, largely focusing on advising government. Therefore, I bring a government financing and public policy perspective to the board table. I've worked in Toronto, New York and Tokyo.

I am currently the deputy chairman of TD Securities, a position I've held since 2006. In addition, I am chair of the George Brown College Foundation, where I also chair the audit committee, and I serve on the Canadian board of Orbis International, a global charity that owns and operates the world's only flying eye hospital and is committed to eliminating preventable blindness in the developing world. In 2007, I was executive-in-residence at the University of New Brunswick's faculty of business. I currently sit on the Ontario Minister of Finance's economic advisory panel.

I should also mention that I have recently graduated from the Institute of Corporate Directors' director education program at the Rotman School of Management.

I also hope to continue to serve on the customer service committee of the Metrolinx board, chaired by Mr. Nick Mutton, who was here, I think, last week. I'm enjoying the work of the board in this particular committee. I believe in the value of a strong customer-focused approach to business and think it should be an important factor in ongoing board deliberations.

If appointed to the Metrolinx board, I intend to work to the very best of my ability to make a positive contribution to transit development in the GTHA.

Thank you.

Mr. Ernie Hardeman: Thank you very much. As I said, we'll start the questioning with the official opposition.

Mr. Frank Klees: Thank you, Mr. Turnbull, for being here today and for your willingness to serve. It's a huge challenge that Metrolinx has in terms of its mandate and the plans ahead.

You have extensive experience in the financial services sector. I'd be interested in your view relative to the challenge that Metrolinx will have to fund the infrastructure plans. We know the state of Ontario's finances: a \$25-billion deficit. I see that you're an adviser to our finance minister. He's probably not listening to very much of your advice these days. From our perspective, I

think he's made some questionable decisions, but that's not for our discussion here.

I'd be interested in your views as to how Metrolinx will ultimately be able to meet the challenge of financing multi-billion-dollars of infrastructure projects in this province.

Mr. Douglas Turnbull: That is an enormous challenge. I think that's probably the biggest single issue that the board of Metrolinx is going to be wrestling with over the next several years.

The Big Move and the priorities that the board has envisaged a \$50-billion capital spend. That's only part of the challenge. The other part is the operating expenses that come with the system as it expands and builds out. This government has pledged roughly \$10 billion of that, and I think the challenge for the board and for the management of Metrolinx is to come up with the appropriate tools and the appropriate financing models in order to fund the rest of the projects. The board's mandate is to come back by 2013 with the financing proposals to the shareholder.

Mr. Frank Klees: Which really brings me to my next question: 2013 is generations away in terms of activities that happen within politics. In your private sector role, I can't imagine that your organization would lay plans for a capital project and then say, "By the way, come back three years down the road and tell us how we're going to fund this." That would never happen. It wouldn't take you three years to come up with a plan.

From our perspective, we question the motivation of deferring a funding solution for three years. Given the CVs of people like yourself and other members of the board—I've complimented the government before on their selection of board members, very capable people—surely you would be able to come forward with a funding proposal long before 2013, given the mandate.

Mr. Douglas Turnbull: That's a fair challenge to put forward. It is complex, though. The important thing is to get it right and make sure that we've looked at all the options that are available, widely discussed that, sought input from all the relevant stakeholders in the GTHA, and come up with a proposal that gets this right for the next 50 years, the next 100 years. So I would be cautious about trying to rush it, trying to get something in place too quickly that doesn't allow full discussion and full debate about what all the alternatives are.

0910

Mr. Frank Klees: What's encouraging to us is that we seem to have a very strong board directorship here of independent-thinking people, and what we're hoping is that you'll do exactly that: You'll play the assigned role of an independent director and challenge the government in terms of their timing on this. With every year that's delayed, we fall behind.

My last question to you is with regard to the budgeting. We see the \$50 billion of capital expenditures. Nowhere have I seen any reference to the billions of dollars or even the line item relating to the makeup for infrastructure that's already there and in the ground and that

will need to be addressed. Has there been discussion at the board, not just about the forward-going new capital projects, but the amount of investment that has to be made on the existing infrastructure, replacement of infrastructure, addressing the safety issues, and what that will result in? What is the line item that addresses that?

Mr. Douglas Turnbull: I'm not sure that I can recall a line item per se. I can tell you that at every board meeting I've been to—and I've been on the board since May—at every discussion there are extensive and detailed discussions about the infrastructure backlog in Ontario, the state of infrastructure, the repair that is required in all jurisdictions—this isn't just an Ontario problem—and the impact that that's going to have as we build out our projects, because they can't be done independently.

Without question, if Metrolinx is successful in implementing the Big Move and implementing its priorities, that's going to go a long way to addressing the transportation infrastructure shortfalls that we have.

Mr. Frank Klees: Thank you, Chair.

The Chair (Mr. Ernie Hardeman): Mr. Hampton?

Mr. Howard Hampton: Sorry I wasn't here for your initial presentation, but I think we have enough paper on you.

There have been several attempts at what is now called Metrolinx, if you go back over the last 15 years. When you read some of the newspaper accounts—let me just give you one. Mr. John Howe, Metrolinx vice-president in charge of investment strategies, says, on the one hand, referring to the Transit City plan to extend a series of light rail train lines, "These are the first TTC projects so to speak that would be delivered by [private financing]. And if they are successful we would see it perhaps as the model to deliver more transit projects in the region."

If you listen to TTC general manager Gary Webster, he says, "We're working with Metrolinx and Infrastructure Ontario to determine what the appropriate construction approach is, whether it's a design-bid-build, which is the normal approach the TTC has used to build major projects, or if you use an alternate financing approach, which allows you to back-end-load your costs to this"—in other words, put more of the costs into the future.

Then you also have the TTC chair, Councillor Adam Giambrone, reportedly warning that establishing a public-private partnership could delay the start of the three projects: the overhaul and extension of the Scarborough RT and the construction of the Finch Avenue LRT and the Eglinton crosstown line, which are now scheduled for completion in time for the 2015 Pan Am Games.

So there's one issue, and you have three different opinions. What's your view?

Mr. Douglas Turnbull: I don't mean to sound flippant, but I don't see those as being inconsistent. I do think that there is going to be vigorous debate on the right way to fund the projects that are coming.

I do think that there is a recognition that there is urgency—not Pan Am-related, but there's urgency to get on with the job. There are a couple of different models that are being looked at. So my expectation is that the board is going to put an awful lot of thought, effort and research into determining what the right approach is. There's going to have to be a lot of discussion around the negotiating tables with the various stakeholders to ensure that everyone's objectives are met. Not everyone's will be. Eventually, a decision is going to have to be made to proceed on one basis of financing or another, and to proceed down one track or a different one.

Mr. Howard Hampton: Just to follow up on Mr. Klees's question, I think one of the things that is starting to puzzle people is that on the one hand you hear announcements that project X, Y or Z is going to go forward, but when you ask the question, "How is this going to be financed?", the response you get is, "We haven't figured that out yet." How do you make a decision to go forward with something when you haven't figured out how it's going to be paid for?

Mr. Douglas Turnbull: I don't think you do. There has to be an expectation that there is financing either available or in process. I don't think you can say, "We're going to do this," and just hope that it all gets financed.

However, I would say that there is extensive research to get the financing right for the projects that have been announced and that are slated to be done. I think there has to be some goodwill amongst all parties that the group that is charged with planning the financing and approving the financing is going to do their homework and their due diligence to make sure it's done properly.

Mr. Howard Hampton: If I may, I look around at the wreckage in the North America economy and the world economy, and I would say at least a lot of it is due to the fact that people said, "I'm going to buy something" without really figuring out how they were going to pay for it, and then other people floating financial instruments that didn't pay for it either. So I get nervous when I read, on the one hand, an announcement that this project is going to proceed—and the project I can point to most readily is the train to the airport. So the announcement is made, "This is going to happen," and then in the next breath I read, "But we don't even know if the technology exists yet to do it this way." Then, in the next breath, "And we haven't figured out how we're going to pay for it." We're talking here, as I understand it, of at least \$50 billion. So I get nervous when I hear people tossing around \$50-billion figures and then they say, "But we haven't figured out how we're going to pay for it," because it sounds like a repetition of some of the sorry history we've experienced in the last four years.

Mr. Douglas Turnbull: I guess I would see that a little bit differently. I understand the frustration that comes from there being different approaches to funding capital projects, and that it's not clear that there is one approach that you can make a decision on. I don't think you can. I think that there are a number of different ways that large capital projects can be financed and have been financed very successfully in North America, elsewhere

around the world and here in Ontario. Infrastructure Ontario, for instance, which is very involved in this process, has a terrific track record of managing big, complex capital projects and getting them financed efficiently, with demonstrated public value. So, I guess I am more confident sitting around the Metrolinx board table that the financing can be arranged, and it will be demonstrated to be in the public interest in value-for-money financing.

Mr. Howard Hampton: In today's news coverage, I think of another project that was essentially turned over to private sector management and what will be, in the longer term, private sector financing—it's called the 407—and the head of the 407 saying to people, "Well, if you're not prepared to pay for the road, don't use it." I would hate to think that that's how our public transit system is going to end up—if you can't afford to pay the fees, don't use it.

Mr. Douglas Turnbull: I can't imagine any scenario under which that would happen.

The Chair (Mr. Ernie Hardeman): Thank you very much. Government side?

Mr. Michael A. Brown: Thank you, Mr. Turnbull. We appreciate your putting forward your skill set and your background to assist in what is obviously a major challenge in the province. We have seen a number of your colleagues on the board here in front of us, and we'll be seeing some more.

I don't think, as Mr. Klees pointed out, that anybody can question the credentials of all the folks who have volunteered, literally, their time and their expertise to this project.

So thank you very much. We certainly value your skill set and your dedication to public service.

Mr. Douglas Turnbull: Thank you.

The Chair (Mr. Ernie Hardeman): That concludes the time allotted—not quite the time, but the questions are concluded, and we thank you very much for coming forward. Obviously, there are many challenges ahead, but we appreciate your being willing to take on solving some of those challenges.

Mr. Douglas Turnbull: Thank you, Mr. Chair.

Mr. Frank Klees: Is it possible to get Mr. Turnbull's opinion of the impact of the HST on mutual funds before he leaves?

Laughter.

The Chair (Mr. Ernie Hardeman): That should have been part of the questions.

Our second interview is with Richard Koroscil, intended appointee—

Mr. Yasir Naqvi: Chair, there's a vote in four minutes, so you might want to consider our voting first, before we call the next witness. We're in your hands.

The Chair (Mr. Ernie Hardeman): That's in four minutes. We hate to make individuals wait, but rather than starting and cutting into the presentation halfway through, we will recess. Hopefully, all of us will get back immediately after the vote to finish with this.

The committee recessed from 0923 to 0934.

RICHARD KOROSCIL

Review of intended appointment, selected by third party: Richard Koroscil, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): Thank you all for being back and we thank Richard for being here with us this morning. We will, as we mentioned with the earlier one, give you the opportunity to make a presentation about yourself and the appointment. Then we will have questions from the three parties, starting with the third party this time. We'll make the rotation 10 minutes for each party. Hopefully that will conclude our interviews.

Thank you very much for being here and the floor is yours, sir.

Mr. Richard Koroscil: Thank you, Mr. Chairman and members of committee. It's a pleasure for me to be here and a real honour to be considered for the Metrolinx board. I've participated in the board since May and have been impressed immensely by the calibre of board members who are participating in the challenge that we face.

I'd like to touch on two things, if I may: one, my view of how important the work Metrolinx will be undertaking is to me personally and to the province of Ontario; and secondly, talk a little bit about my suitability as a board member.

In 2003, I returned to Ontario from British Columbia after 10 years being away, working with the Vancouver Airport Authority. When I arrived back in Ontario and became very involved in the transportation business in the province, I was very surprised that the province did not have what I would call a long-term, integrated, multi-modal transportation strategy, particularly considering the area that we're located in is really the heavy-industrial/commercial area of Canada and one of the largest in North America. What we found was each mode of transportation operating independently within its own silo, and no coordination between those modes of transportation.

The GTTA, now Metrolinx, began its work not long after I had arrived. Through its heavy public consultation process—which I participated in quite a bit, through the process—it developed the Big Move, the plan taking Metrolinx forward. This is a huge step, in my mind, for the province of Ontario. It really begins to talk about transportation as an economic enabler and how important it is to our provincial growth and economic diversity as we go forward. For me personally, this is a big opportunity to participate in helping grow the province of Ontario.

With respect to my background, I have 33 years in the transportation business. I'm a practitioner of transportation, most of it being in the air sector, but in the air sector we really deal with a lot of intermodal activity. I've been involved in business—private and public—in Canada and internationally, all over the world. In my previous employment with Vancouver Airport Services, we were

bidding on and building airports all over the world. Today we operate about 18, in seven different countries.

At Hamilton International, as president and CEO, I've participated in and been involved with the development of the Southern Ontario Gateway Council, and the McMaster Institute for Transportation and Logistics, the first of its kind in central Canada and an opportunity for the private sector to partner with educational institutions to focus on transportation and logistics, the gathering of data, analysis and recommendations for improvements in transportation. I also participate as a board member on the Ontario Chamber of Commerce and Hamilton Chamber of Commerce, focused very much on transportation policy.

With that, I'll thank you very much for your attention, and I'll be happy to answer any questions.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. As I said earlier, we'll start the questioning with the third party.

Mr. Howard Hampton: Thank you for your presentation. You stated that most of your experience is in air transportation: air transportation planning, air transportation operation and the financing and building of airports. Is that right?

Mr. Richard Koroscil: Correct.

Mr. Howard Hampton: So when you were with Vancouver—I just want to be clear—you worked at Vancouver International Airport?

Mr. Richard Koroscil: Correct.

Mr. Howard Hampton: And then you worked for the organization Vancouver Airport Services.

Mr. Richard Koroscil: That's also correct.

Mr. Howard Hampton: They're not one and the same?

Mr. Richard Koroscil: No. I started with the Vancouver Airport Authority. In 1996, we spun off a small subsidiary company—because we had people coming from all over the world to look at the things that we were doing here in Canada that they were viewing as being quite innovative—and created Vancouver Airport Services to be able to bid on airport projects.

Mr. Howard Hampton: So building airport facilities—

Mr. Richard Koroscil: Building and operating, yes.

Mr. Howard Hampton: —and operating airport facilities?

Mr. Richard Koroscil: Correct.

Mr. Howard Hampton: Okay. I think it would be fair to say there's a big difference, though, between building and operating airport facilities and trying to operate bus, rail, subway, commuter operations. Fair to say?

Mr. Richard Koroscil: No, I would say there are a lot of similarities. We're both in the process of moving people. It's very customer-focused. Both involve heavy capital investment in infrastructure and day-to-day operations at the same time.

0940

Mr. Howard Hampton: One of the issues that is certainly on the front page is the issue of how you move

people from Toronto airport to downtown Toronto. It wasn't that long ago one of the issues, especially when WestJet was flying in and out of Hamilton a lot, was how you move people from Hamilton airport to Toronto and the greater Toronto region. Do you have some views on those things?

Mr. Richard Koroscil: Well, ground transportation is a key component for any airport's growth. I can point to my previous employer. The Vancouver Airport Authority has now built the new Canada Line, as an example, in Vancouver, connecting the airport to the downtown city core. It is a key component in terms of long-term viability and growth.

Mr. Howard Hampton: Were you involved in that when you were in Vancouver?

Mr. Richard Koroscil: No. Actually, it happened just after I left.

Mr. Howard Hampton: Okay. Were you involved in any of the planning, any of the design, any of the engineering studies?

Mr. Richard Koroscil: No.

Mr. Howard Hampton: Okay. I'll repeat my question. It is important to be able to move people from airports to where they live and to where they work. It's an issue that's been kicked around in Toronto and the greater Toronto area for some time. Based on your experience, you must have some views about how best to do this.

Mr. Richard Koroscil: Well, all of the major airports in the world—especially when you go into Europe—you'll find rail connections going into most of them.

Mr. Howard Hampton: Subway connections in some cases?

Mr. Richard Koroscil: Subway or rail. I would view subway as being part of rail.

Mr. Howard Hampton: Okay. So you think that's the preferred way to go?

Mr. Richard Koroscil: No, I'm just saying rail is one opportunity. Other modes of ground transportation are essential, too, because you can't provide access to the many different locations that people are coming from or to just with rail.

Mr. Howard Hampton: If you were in the room before, one of the issues you can read about almost every other week on the front pages of the papers: On the one hand, projects are being announced or projects are being confirmed. Then the question is asked, "All right, how are you going to pay for this?" Usually the response is, "Well, we're still studying that." To me, it seems a bit odd. If I announce I'm buying a new car, usually I've figured out how I'm going to pay for it, but we seem to be saying, "Well, we're going to do this project, but we'll think later about how we're going to pay for it." Have you been involved in any of the discussions about how to pay?

Mr. Richard Koroscil: I think the board has been involved in discussions about how important it is to get that part of the puzzle resolved as quickly as possible.

Mr. Howard Hampton: And your view is?

Mr. Richard Koroscil: That it also needs to be resolved.

Mr. Howard Hampton: One of the major debating points is do you do this traditional public sector or do you do it by means of what is commonly called private-public partnerships. Do you have any views on that?

Mr. Richard Koroscil: Well, I think it's incumbent upon both management and the board to make sure that all avenues are researched appropriately and come forward with a recommendation that makes the most sense for each individual project.

Mr. Howard Hampton: The current chair of the TTC says he is worried because some of these projects, in his view, are urgent in terms of their timeline. He's worried that detailed discussions of public-private partnerships will take so long and will be so detailed that, in fact, the projects themselves will be put on the sideline. Your views?

Mr. Richard Koroscil: Well, I think that's part of the consideration that has to be taken when you're doing evaluation of what type of funding or financing you're going to use. It could be one element of the decision-making process.

Mr. Howard Hampton: Thank you.

The Chair (Mr. Ernie Hardeman): To the government. Mr. Brown.

Mr. Michael A. Brown: Thank you for coming today, and thank you for making your experience and skill set available to a very important board.

I think all of us are very impressed not only with your credentials but the credentials of the various members of the board. You represent a broad experience level across a lot of disciplines. I'm particularly impressed with the fact that the board has someone with airport experience. It seems to me kind of innovative but also someone that we needed to have at the table.

We appreciate your taking the time and the effort to serve the public on this important board. We will be supporting your concurrence.

Mr. Richard Koroscil: Thank you.

The Chair (Mr. Ernie Hardeman): Thank you very much. Mr. Klees, with the official opposition.

Mr. Frank Klees: Thank you, Chair. How much time do I have?

The Chair (Mr. Ernie Hardeman): You have 10 minutes, when you start.

Mr. Frank Klees: Thank you.

Mr. Koroscil, thank you for being here. You have a fair amount of experience as a director. Traditionally, as an independent director in an organization, a public company particularly, there's a relationship that the independent director has to management and to shareholders. One of the fundamental roles of the board is to hold management accountable and to ensure that the shareholders' interests are met. In your opinion, as a director of Metrolinx, who is management and who are the shareholders?

Mr. Richard Koroscil: Management would be staff—our president and CEO, the vice-presidents and

the staff who work for them—and the shareholder would be the province of Ontario.

Mr. Frank Klees: Given that relationship, how do you deal with the issue of ensuring that the government, as represented by elected officials—that is, the minister; at the municipal level, it would be mayors and councillors. How do you deal with their role to ensure that Metrolinx is making decisions that are in fact in the best interests of—and I would go beyond. You say the government of Ontario; it really is the municipal and provincial levels of government here, and more importantly, it is the taxpayers, at the end of the day. Elected officials should always represent the taxpayers. I'm not sure that always happens. So I think your challenge, really, is to ensure that the public interest is met.

How do you avoid being guided in your decisions by the political tug of war that quite often takes place and ensure that, as a board, you're making those decisions that are in fact in the public interest versus what's in the interest of the mayor of Hamilton, for example, who has your ear and is going to be lobbying in terms of what's best? And rightfully so; that's understandable. How do you guard against that?

Mr. Richard Koroscil: I think you've kind of articulated the issue for me clearly, and that goes back to the public. Part of our responsibility, in terms of operational issues, particularly with Metrolinx, is that we're serving the travelling public that's there. So our consideration has to be, "What's in their best interests?"

Mr. Frank Klees: In the time that you've been on the board, have you ever sensed that there may be some pressure put on the board politically in terms of the decisions that the government or a mayor may want to see as opposed to what may be in the public interest?

Mr. Richard Koroscil: No, I've never sensed that conflict—not yet, anyway.

Mr. Frank Klees: And as an independent director, you will stand firm against any such suggestion of lobbying, I'm sure.

Mr. Richard Koroscil: Absolutely.

Mr. Frank Klees: And decisions will always be in the public interest.

Mr. Richard Koroscil: Correct.

Mr. Frank Klees: I have confidence, by the way, that you'll do that, which is why we have no hesitation supporting your appointment.

I do have a question. I was pleased to see your experience in air transportation, and we talk about the mandate of Metrolinx in terms of multi-modal transportation. What I thought was a huge gap in terms of its mandate was that really, there's no mention of air transportation. In the greater Toronto area and the Golden Horseshoe area, surely air transportation should have a significant role and be recognized as having that. We have a major challenge in York region, for example, with the Buttonville airport. The Greater Toronto Airports Authority has pulled funding, and the province has washed its hands of funding, yet here is a significant economic impact. The

owners of that airport have said they're going to shut it down. That leaves an incredible gap.

0950

I'd be interested in your view as to whether Metrolinx may have a role in raising an alert about the importance of regional airports. You have one in Hamilton similar to the Buttonville airport. Is there any hope, particularly given your experience, that that may be something that Metrolinx takes an interest in and at least ensures that, as we consider this massive infrastructure undertaking, the role of regional airports is taken into consideration?

Mr. Richard Koroscil: It's a very good question and a good point. In our discussions as part of the Southern Ontario Gateway Council, as an example, we, in terms of policy, took the position at the inception of the SOGC that the concept of intermodal, integrated transportation was extremely important for Ontario's economic growth and opportunity. That included all modes of transportation. I know that the Big Move and the work that the GTTA did has, in fact, talked about the connection to Pearson and the importance of that. It is one of the largest employment centres in Ontario, even for me in Hamilton in terms of the airport there being an economic generator for Hamilton and the region. Having discussions about those intermodal connections is very important and personally important to me as well. It is an important component.

I think it's one that the province, for many years, has not necessarily got involved in, and for good reason. The federal government really was responsible for aviation. They, at one point, even owned the airlines and owned and operated all of the airports. They were in the marine business, operating and owning ports and railroads; in fact, they owned railroads at one time. So we've seen a change take place in terms of governance with respect to transportation in Canada, and in Ontario in particular, where many of these assets now have been let go, but the responsibility for their long-term planning in terms of integrated strategy has not been there.

I think the province and Metrolinx, rightly so, have now taken the torch up to say, "Somebody needs to be doing this." That's one of the reasons I'm very pleased with the work that the GTTA has done in terms of its consultation. Again, I participated in that process and had ample opportunity to have input into that. I think that has put us in a good position to go forward and to be able to deal in more detail around what that really looks like as we go forward. What should that integrated and intermodal strategy be? What are the details around that? I would suspect that as we go forward in terms of Metrolinx's work, we'll see more discussion and more work being done on that.

Mr. Frank Klees: I would hope that the issue of regional airports is, in fact, taken into the loop as you consider expanding your planning in that area.

The Chair (Mr. Ernie Hardeman): The answer to your previous question is zero now—no time left.

Mr. Frank Klees: Can I ask for unanimous consent to give me another 10 minutes?

Mr. Michael A. Brown: No.

Mr. Frank Klees: No? Thank you, Mr. Chair.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. That concludes this presentation.

JENNIFER BABE

Review of intended appointment, selected by third party: Jennifer Babe, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): Our third member to be interviewed this morning is Jennifer Babe, intended appointee as a member of Metrolinx. You may come forward, Jennifer. Thank you very much for coming in this morning. We appreciate your taking the time.

As with the previous interviews, we will give you the opportunity to make an opening statement if you wish. We will then start the questions, 10 minutes for each party in rotation. This time, we will start with the government caucus. With that, the floor is yours, and we look forward to hearing from you.

Ms. Jennifer Babe: Thank you. I'm very pleased to be invited before the committee this morning. In fact, I'm here again because it was November 16, 2005, where I appeared before the committee before, when I was being first considered to be an appointee to the old GO board.

I have served three and a half years on the GO board and have been on the transition board now since May, so I have roughly four years of experience, particularly on the operating side of GO, with its growth, about which I've been very excited to participate.

On GO, I served for the last several years as chair of the governance committee. You may not be aware, but in the past, management of GO had asked for the public auditor to come in and do a value-for-money audit of GO. The report was well received and the recommendations were taken to heart. I'm very pleased to have participated as the chair of the governance committee in responding back to the Minister of Transportation while GO still existed as a separate crown entity. We had addressed all of the auditor's issues, and we had all of those materials available, which were provided to amalgamated Metrolinx. I'm continuing to serve on its governance committee as we focus to do our work to put forward the recommendations of the auditor and as we have responded to them in the unique world of being a crown agency.

I'm continuing to serve not only on the governance committee but also on the audit and risk management committee. It's often said that solicitors, of whom I am one, are people who tell others what not to do because there are problems; and that is, I suppose, my viewpoint coming to the board, to raise issues and problems and contemplate problems.

I have been very desirous of being included in public service through not only my work for the last four years for GO and now Metrolinx—serving on the board for four years at the YMCA of Greater Toronto. I've been a

long-time standing volunteer and fundraiser for the United Way, and I'm the immediate past chair of the national business section of the Canadian Bar Association. I have about 25 years of involvement in service for the profession through the Ontario and the Canadian bar associations.

My personal background is probably in the resumé before you, relative to my education, and I'm now about 28 years into the practice of law in Ontario with a law firm which has 500 lawyers in nine cities, five of which are in Ontario. And I'm uniquely aware, in my role as an employer in the greater Toronto and Hamilton area, about the need for transit, not only for ourselves as employers but the need of the public for safe, clean, reliable transportation and what role that plays for our social services and a clean, healthy environment for the province.

So, again, I'm very pleased to be able to serve and wish to continue to serve. I'm therefore glad to be here this morning.

The Chair (Mr. Ernie Hardeman): Thank you very much. With that, we will move to the government. Mr. Brown?

Mr. Michael A. Brown: Again, we appreciate your putting your name forward and value your experience on the GO board before this.

This is a major undertaking, and I guess I don't need to tell you that. But we have a broad spectrum of people from various backgrounds that provide us skill sets, and more than the skill sets that are quite broad, some people with real experience, as you do, in this particular board or ones similar.

So I just want to indicate the support of the government in concurrence for your appointment and thank you very much for your public service.

Ms. Jennifer Babe: Thank you.

The Chair (Mr. Ernie Hardeman): Thank you very much. The official opposition: Mr. Klees?

Mr. Frank Klees: Thank you, Ms. Babe, for being here today.

You mentioned your role previously with GO, so obviously you're very familiar with the day-to-day operations and particularly the committees that you've been involved in there. And having been the lead in responding to the auditor's report, you're obviously familiar first-hand, as well, with some of the concerns that the auditor had and you responded appropriately. With regard to those issues that were identified by the auditor, as a director who has the responsibility, not to protect management—that's not your role. It's also not your role to protect government. As I had the discussion with Mr. Koroscil—you're really acting in the public interest.

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Are you absolutely satisfied that all of the issues that were raised by the auditor have been fully addressed and that, in fact, the public interest is being served?

Ms. Jennifer Babe: I am very heartened by the steps that have been taken in the last several years, both at GO and now implemented into the governance policies and procedures at Metrolinx. I think it reflects some of the

highest standards of what I've experienced in my career, and it certainly falls clearly within the guidelines established as the legislated mandate that has been given to GO as a creature of statute with a statutory objective, memorandums of understanding with the minister, and our policies that have been put in place.

I am very, very heartened by what I have seen in the last six months go forward, and I am extremely confident in my fellow directors to be totally mindful of their fiduciary duties, both as governed by the statute and their independence in being those guardians of that mandate and that fiduciary duty.

Mr. Frank Klees: It's a great response but it is not answering my question. I expect that from the government during question period.

My question was very specific. It related to the issues that were raised by the auditor. I'll repeat it: Are you absolutely confident that all of the issues that were raised by the auditor have been fully addressed by GO? Can you just answer that?

Ms. Jennifer Babe: Yes.

Mr. Frank Klees: Okay. Should GO be held to the same safety standards and inspection requirements for their equipment, whether it be buses or trains, that the private sector is held to?

Ms. Jennifer Babe: I don't know the requirements at law, but I believe they are under the same requirements when operating railways under the railways act, and all of the other public health and safety and transportation legislation, as are the private sector. To the best of my knowledge, they are completing the same statutory requirements.

Mr. Frank Klees: I would ask that you, as an independent director, perhaps take the time to look into that and do some research and ask for a report that you might share with your directors. It's my understanding that there really are two different levels of safety standards. One is the standards and terms of the kind of inspections that are required on a daily basis of buses that are operated by the private sector. Those standards are different from the kind of safety standards and inspection requirements that GO buses are held to.

I happen to have a serious concern about that. I have had representation in my office from operators of GO as well as operators in the private sector who have concerns that there are two different levels of safety expectations and that the safety issue is one that could create serious problems down the road.

Whether those different levels of inspections or standards have crept in over time as a result of trying to save money along the way—I hope that's not the case—or whether there is some other technical explanation for that, I happen to believe that it's unacceptable. Certainly, it also creates an uneven playing field when it comes to private sector operators participating in the transportation industry.

So if you would do that, if I can have that undertaking from you, I would appreciate that.

Ms. Jennifer Babe: I will raise it with the risk management side of the audit committee, and we will put that on our agenda.

Mr. Frank Klees: Thank you. I have no further questions. I wish you well. Thank you again for participating as a director. I realize it's a lot of time—it's a volunteer position—and we're grateful for your contribution.

The Chair (Mr. Ernie Hardeman): Mr. Hampton from the third party.

Mr. Howard Hampton: I just want to ask you some questions about your past experience and take it from there.

Having experience on the GO board, I wonder if you could tell me, in terms of GO's costs of operation each year, how those costs of operation were covered.

Ms. Jennifer Babe: There were three separate budgets relative to the GO operation. There was a capital budget for expansion, a refurbishment budget to keep things going and maintained, and then there was an operating budget. After the fare box was collected or any sundry revenues, then there was a subsidy from the province to make up the shortfall in the day-to-day operating budget on the GO side.

Mr. Howard Hampton: What costs of GO would municipalities have picked up?

Ms. Jennifer Babe: The municipalities were to provide certain amounts of money toward expansion. That has been a long-discussed issue between the province and municipalities. I believe it relates to the Municipal Act and whether their participation in growth should be funded by the existing ratepayers or by new development charges. That is a statutory issue that has to be resolved between the political sides of municipal and provincial government.

Mr. Howard Hampton: And what about the refurbishment part of the budget?

Ms. Jennifer Babe: Refurbishment, I believe, was both federal and provincial funds, and there were contributions in part from both.

Mr. Howard Hampton: And operating was fare box and the province?

Ms. Jennifer Babe: Fare box and the province.

Mr. Howard Hampton: No municipal responsibility there?

Ms. Jennifer Babe: I can't remember, but I don't believe so.

Mr. Howard Hampton: Okay. I don't expect you to know the details of this, but the TTC, in the broad picture part of things, will be part of Metrolinx—

Ms. Jennifer Babe: Actually, it won't. It may be a partner in some development, but it is a separate entity.

Mr. Howard Hampton: Okay. But TTC—how are the costs covered there?

Ms. Jennifer Babe: From what I read, as a citizen, in the press, it's a combination of seeking money from the city of Toronto and the province to backstop its shortfall in operations over and above the fare box.

Mr. Howard Hampton: You can read the debate week by week about how TTC expansion will be

covered. TTC officials have one view, it would appear. Metrolinx officials have another view. But one of the issues that has been raised with me—I think this really is a governance question. There will be significant costs in this for municipalities—maybe operating costs of buses, operating costs of the TTC—yet on the board there are no municipal representatives. I get worried whenever I see people making spending decisions that other people will have to pay for and yet the people who ultimately will have to pay don't have any representation where the decisions are going to be made.

Ms. Jennifer Babe: Metrolinx can't make the decisions for those people. Those people will be partners, whether it's Viva up in York region or whether it's the TTC in the city of Toronto as part of the expansion. Those agreements have to be negotiated with full participation by those partners, if they wish to proceed or not.

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Mr. Howard Hampton: Let's just take the current TTC expansions, which are, as I say, being discussed in the newspaper. Are you saying to me that if Metrolinx says it shall be done thus and so, the TTC can simply say, "Sorry"?

Ms. Jennifer Babe: It doesn't have to sign the agreements if it is not in favour of a decision that's being recommended by Metrolinx.

Mr. Howard Hampton: But if the TTC is not in favour of the decision that's made by Metrolinx, how does something like the Scarborough light rail—which needs to be updated, refurbished—happen?

Ms. Jennifer Babe: If there can be no agreement made on how it proceeds forward, it may be on the back burner until an agreement can be made. They have to make their own decision on how they wish to participate.

Mr. Howard Hampton: So, for example, some of the other TTC projects: If Metrolinx says it shall be done thus and so, and the city council doesn't agree, and/or officials at TTC and the city council don't agree, what happens to the projects?

Ms. Jennifer Babe: They won't go forward until there are agreements by everybody. This has to be a partnership. It isn't the objective of Metrolinx to say, "This shall be it." We can make recommendations. It comes from Places to Grow, it comes from the Big Move, it comes from GO's MoveOntario 2020. Those are all great concepts, but it has to be done in partnership with the other municipalities, their transit systems. It has to be a coordinated effort with everyone's agreement at the table.

Mr. Howard Hampton: I think this is a real issue of governance and an issue of control.

Two things would bother me that are in your legislation. We just heard the Auditor General give a devastating report about eHealth, about literally dozens of contracts going out the door that were untendered. I don't think I'm exaggerating when I say the Auditor General said \$1 billion went out the door in untendered contracts and we don't have much to show for it. Metrolinx, in the

legislation, is expressly permitted to engage in untendered contracts.

Ms. Jennifer Babe: Metrolinx has also adopted all of the recommendations, and from the audit committee we have passed, and the board has passed, all of the policies to follow all of the recommendations, as they're coming out—almost weekly now—by the province on procurement requirements.

There are times where there will be some single-source. If you are running trains on CNR's rails, CNR will tell you what they're prepared to accept, and you may have to sole-source because it's CN providing the service. Otherwise, from sitting on the audit committee both at GO and what I've seen so far at Metrolinx, it is fully transparent, audited at so many levels—federal, provincial, municipal—for their partnerships. I am not, and have not been, worried about that.

I can tell you, Mr. Hampton, that in four years of experience with the bidding process from the GO side, there hasn't been a single claim against GO for bidding and tendering in the public sector. That is just a stunning statement for me to be able to proudly say, relative to how rigorous the process has been, both at GO and continued forward in all the policies that are in place. I have every confidence in those systems.

Mr. Howard Hampton: So you're not concerned that the Metrolinx legislation expressly allows the board to engage in untendered contracts?

Ms. Jennifer Babe: I don't think it's going to happen because of the policies that the board has put in place.

Mr. Howard Hampton: The other issue—and again, the Auditor General has commented on this. We do have some experience, especially in hospital construction, with public-private financing. I'll give you an example: the Brampton hospital. The Auditor General did a report on that, and I don't think I'm exaggerating his statement when I say he said that the public-private financing model added significant costs to the project; in fact, I think you could say it added substantial costs to the project. We're talking about \$50 billion of infrastructure. So I look at what has gone on at the Brampton hospital in terms of the added costs, which nobody said were going to be incurred—everyone said, "Oh, no; this is going to come in on budget etc., etc." There were significant additions to the cost.

Then you add that to untendered contracts and then you add that to the fact that there are no municipal representatives on the board, and I wonder if we aren't putting together a potion here which has the capacity to lead us in a direction we don't want to go, to some results that we don't want to see.

Ms. Jennifer Babe: Is there a question? I'm sorry—

Mr. Howard Hampton: As I said to one of the earlier appointees, if you look at what has happened in the United States and you look at the financial wreckage that is there—Metrolinx has three things that I would consider problematic: some of the people who are going to be covering the costs—municipalities—have nobody on the board; the express capacity to engage in

untendered contracts; and, I would say, more than a fascination with public-private financing. The Auditor General has already commented on that in the context of the Brampton hospital. Aren't you a little bit concerned by the combination of those three things?

Ms. Jennifer Babe: Not at the moment, because I can tell you that we have not come to a decision as a board on such things as how—we have a statutory mandate to come up with a financing plan. That has just started.

Mr. Howard Hampton: If I read the paper—

The Chair (Mr. Ernie Hardeman): Mr. Hampton, your time is running out.

Mr. Howard Hampton: If I read the paper—your vice-president seems to have already formed some conclusions as to how, for example, the initial TTC projects should proceed.

Ms. Jennifer Babe: The board hasn't come to a conclusion yet because staff hasn't presented a policy recommendation to us yet. I know that they're out there working on it and they are looking at best-in-class in the world on what is working out there for others in transportation. They haven't given us that information yet.

The Chair (Mr. Ernie Hardeman): Thank you very much, and that does conclude the time for the interview. We thank you very much, Ms. Babe, for being here, and we wish you well in your endeavours with Metrolinx.

Ms. Jennifer Babe: Thank you.

The Chair (Mr. Ernie Hardeman): That concludes the interviews for this morning.

We will now proceed to deal with the concurrences. We will consider the intended appointment of Douglas Turnbull, intended appointee as a member of Metrolinx. Do we have a motion on concurrence?

Mr. Michael A. Brown: I move concurrence of Mr. Douglas Turnbull to the board of Metrolinx.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Discussion? No discussion? All those in favour—

Mr. Michael A. Brown: Recorded vote.

Ayes

Albanese, Brown, Johnson, Naqvi, Pendergast.

Nays

Hampton.

The Chair (Mr. Ernie Hardeman): The motion is carried.

We will next consider the intended appointment of Richard Koroscil, intended appointee as member of Metrolinx. Do we have a motion?

Mr. Michael A. Brown: I move concurrence for Richard Koroscil to the board of Metrolinx.

The Chair (Mr. Ernie Hardeman): Thank you very much. You've heard the motion. Any discussion? If not, all those in favour—

Mr. Michael A. Brown: Recorded vote.

Ayes

Albanese, Brown, Johnson, Naqvi, Pendergast.

Nays

Hampton.

The Chair (Mr. Ernie Hardeman): The motion is carried.

The third concurrence we'll consider is Jennifer Babe, intended appointee as a member of Metrolinx.

Mr. Michael A. Brown: I move concurrence of Jennifer Babe to the board of Metrolinx.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Discussion? If not, all those in favour—

Mr. Michael A. Brown: Recorded vote.

Ayes

Albanese, Brown, Johnson, Naqvi, Pendergast.

Nays

Hampton.

The Chair (Mr. Ernie Hardeman): The motion is carried. That concludes the concurrences.

Any other business from committee members? If not, our next meeting will be at 8:30 a.m. on Tuesday, December 8, in committee room number 1, as we sit here. Hopefully, we will see you all here then.

Thank you very much for your indulgence this morning. We got it done in time.

The committee adjourned at 1020.

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Standing Committee on Government Agencies

Intended appointments

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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 8 December 2009

Mardi 8 décembre 2009

The committee met at 0833 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr. Ernie Hardeman): Good morning. We'll call the meeting to order. Thank you all for coming out this morning.

The first order of business this morning is the subcommittee report on committee business, dated Thursday, December 3. Can we have someone to move the motion to adopt the report?

Mr. Michael A. Brown: I so move.

The Chair (Mr. Ernie Hardeman): Are there any discussions about the subcommittee report? If not, all those in favour? Opposed? The motion's carried.

INTENDED APPOINTMENTS

TONY GAGLIANO

Review of intended appointment, selected by official opposition and third party: Tony Gagliano, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): With that, we will proceed with today's appointment reviews.

Our first interview today is Tony Gagliano, intended appointee as a member of Metrolinx. Tony, if you would come forward and have a seat at the end of the table. We'll give you the opportunity to make a presentation, if you wish to do so. Upon the completion of your presentation, we will have questions from the three parties at the table today. We will start today with the official opposition on the first appointment.

With that, Tony, if you wish to make your presentation, the floor is yours. Thank you again for being here.

Mr. Tony Gagliano: Thank you, Mr. Chairman and members of the committee. Let me begin by saying what a great privilege it is to be considered for appointment to the Metrolinx board of directors. I've participated in the board since May and have been impressed immensely by the calibre of the board members who are involved in the challenge and the opportunity that we have in front of us.

I currently sit on the governance committee and the human resources and compensation committee. I've spent a great deal of my career working with the public sector, with governments of all political stripes across Canada.

As you can see from my biography, I've spent my career in the communications industry. I joined St. Joseph Printing, a small, family-owned print company, in 1979, and have been working over the years to help build it into Canada's largest privately owned communications company. During that time, I was involved when St. Joseph was selected to privatize the Queen's Printer with the federal government. The initiative involved taking over 600 employees from the government and integrating them into our company's culture. Our family and our company's philosophy is that a minimum of 10% of our annual profits and 10% of our time go to charitable organizations.

I'm very proud to sit on the board of St. Michael's Hospital Foundation, Ryerson University and Scouts Canada, as well as being president of the board of the Art Gallery of Ontario and co-founder and co-chair of the Luminato arts festival, which, in its third year, is already the largest multi-arts festival in North America.

If appointed to the Metrolinx board, I intend to work to the very best of my ability to make a positive contribution to transit development in the greater Toronto and Hamilton region. Almost 2,000 families that work for St. Joseph Communications live in this region, and I'm very aware of the need for the public to have safe, clean and reliable transportation, and the vital role transportation plays in the prosperity of the region.

Again, I'm very pleased to be able to serve, and I wish to continue to serve. I'd be happy to take any questions.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. As I said, we'll start the questioning with the official opposition.

Mr. Jim Wilson: Thank you, Mr. Gagliano, for appearing this morning. You're eminently qualified for the board, I have no doubt. Just curious: Did you seek out this application or did someone seek you out?

Mr. Tony Gagliano: No, the Premier asked me.

Mr. Jim Wilson: Had you had any political ties with any particular political party?

Mr. Tony Gagliano: No. I'm not a member of any political party, but St. Joseph has supported all three parties over the last number of years.

Mr. Jim Wilson: I guess I should have asked this many meetings ago. You've been on the board since May, but we're now appointing you. How does that work?

Mr. Tony Gagliano: I think I serve with the approval of a letter on an interim basis, subject to this process.

Mr. Jim Wilson: Any highlights so far?

Mr. Tony Gagliano: We've had several meetings. I guess the highlight so far has been: I sit on six different boards—charitable organizations and the like—and the group of 15 independent board members are as fine a group as I've witnessed working together in an integrated way. I'm coming up with innovative ideas and reviewing matters and discussing them with the groups. So far, it has been five or six months, and I've been very impressed with the calibre of the discussion.

Mr. Jim Wilson: Thanks. I was born at St. Michael's Hospital, so keep up the good work. Those are all the questions I have, Mr. Chair.

The Chair (Mr. Ernie Hardeman): Thank you very much. With that, we'll go to the third party, Peter Tabuns.

Mr. Peter Tabuns: Good morning, Mr. Gagliano. Thank you for being here.

The question that has concerned me about this board is the whole question of private financing and public-private partnerships for provision of transit. Can you give me your thinking on that approach to financing the transit infrastructure?

Mr. Tony Gagliano: I guess my thinking is that it's one of the options, one of the tools at our disposal. What we have to do—as a board that has come together—is explore all the options and, at this stage, wait for management to do their work in regard to presenting what they feel are the best viable options for us to be able to deliberate, review, discuss, challenge and come up with, ultimately, what is in the best interests of the stakeholder here—the people of this province.

Mr. Peter Tabuns: The centre of transit systems in the GTA is the TTC. I know that there's some concern in the TTC that Metrolinx will try and use the body of the TTC to carry the rest, rather than have regional transit financed by the people who live in the suburban areas of the GTA. Do you have any commentary on those concerns?

Mr. Tony Gagliano: I think that one of the advantages we now have is that we really have a focus on the grand picture for the region. I think that the priorities now will be what is in the best interests of the overall network. So as we look at opportunities, we're not looking region by region: we're really looking at the overall best interests. I think that's where the ultimate benefit will come. I'm a big believer in: If you want prosperity in this region, you really have to start with the right integrated transportation network. My view has been that, clearly, over the last few decades, we've fallen somewhat behind. I think this is a transformative opportunity for us to make some decisions and recommendations and act in a way that is in the best interests of the whole.

Mr. Peter Tabuns: The urban form that we're developing in the GTA is generally characterized as one of sprawl. The greater the sprawl, the lower the densities and the more difficult it is to serve. We have a public transit system that is cost-effective and efficient. As a board member, are you willing to raise the question of urban form at the board meetings and have Metrolinx

recommend to the provincial government that its policies consistently work to reduce sprawl?

Mr. Tony Gagliano: Again, I go to the best interests, here. When you think about it, we have a responsibility today, from a transportation standpoint, to move millions of people on a regular basis, and that is going to grow dramatically over the next number of years: doubling and then growing again beyond that. So when we look at it through that prism, I think we have to look at all the options. I think urban sprawl is a very important one from a perspective of where people live, minimizing their transportation time from where they live to where they work to where they go from an entertainment standpoint. It's all part of the responsibility that we have when we look at that.

0840

At this point, I think we have a responsibility to make sure that we're looking at that and we're looking at all the options and making sure that we're making the right recommendations and looking at it through that prism that says, "When we're talking about doubling the number of people that may be using public transportation over the next period of time, number of years"—looking at it through that—"what are all the tools that are at our disposal?"

Mr. Peter Tabuns: I have no further questions.

The Chair (Mr. Ernie Hardeman): Thank you very much. To the government: Mr. Brown?

Mr. Michael A. Brown: Thank you, Mr. Gagliano, for coming before us today and bringing a skill set that will supplement what I think is a very impressive board. We have people from backgrounds, as you know, across a wide breadth of disciplines and interests, and your skill set will be valuable to this board. Thank you for putting your name forward. We will be supporting your nomination.

Mr. Tony Gagliano: Thank you.

The Chair (Mr. Ernie Hardeman): Thank you very much. That does conclude the interview, and we do want to thank you, Mr. Gagliano, for coming forward this morning and offering your services to the Metrolinx board. We do wish you well in your future endeavours.

Mr. Tony Gagliano: Thank you very much.

LEE PARSONS

Review of intended appointment, selected by third party: Lee Parsons, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): The second interview is with Lee Parsons, intended appointee as a Metrolinx member, if Mr. Parsons would come forward. Again, we want to reiterate that we will provide you with the opportunity to make a presentation to start the interview. Upon completion of that, we will have 10 minutes allotted for each party to ask questions. At the end of that, we will all be better informed. We thank you very much for coming forward. We will be starting this

round of questions with the third party. With that, Mr. Parsons, the floor is yours.

Mr. Lee Parsons: Thank you, Mr. Chair and members of committee. It's a pleasure to be here—an honour to be here, really.

I'd just like to say, first of all, that I'm one of the old guard. I sat on the GO Transit board. I was chair of the risk management committee during that time, and now, with your sufferance, will serve on the audit, finance and risk management committees.

Just on a sort of personal background note, I'm an engineer and an urban planner by training and practice. I am a founding partner of an urban planning consulting firm, Malone Given Parsons, that has been around for 30 years. It's hard to believe. We've done over 2,000 projects related to growth one way or the other—growth and change in the urban environment—and most of those are in the greater Golden Horseshoe. So I've had a front-row seat, if you will, looking at growth issues throughout southern Ontario and the GGH over that time.

During that time, I've become very much a committed advocate of transit. Transit is key from many perspectives, as we all know. It's key in terms of facilitating a compact urban form. It's key to urban efficiency. It's key to environmental change. It's key in terms of social equity. And, of course, it's key to the economic productivity and performance of our city region.

I'm very happy to be involved with Metrolinx, hopefully, and look forward to that if that's the decision of this committee. That would be my opening statement.

The Chair (Mr. Ernie Hardeman): Thank you very much. With that, we will start, as I said, with the third party. Mr. Tabuns?

Mr. Peter Tabuns: Thank you, Mr. Parsons, for coming in this morning.

A question I put to the previous appointee, also to you, is the whole question of public-private partnerships and private financing of transit infrastructure. Do you have concerns about that approach to providing us with public transit?

Mr. Lee Parsons: I don't have concerns about it in the sense of whether it's a philosophy that ought not to be considered, but it's also obvious that it's a complex issue and has to be understood very thoroughly before any decisions are made. There's quite a bit of experience of various types with this model internationally now. In my opinion, it's one of the things that needs to be considered. As you know, one of the mandates of this board is to investigate the possibility of alternative modes of finance and procurement. Obviously, until that exercise has been carried out, neither the board nor I as an individual would have a definitive comment on it.

Mr. Peter Tabuns: You obviously have very extensive experience in urban planning. Your presentation understated what was actually given to us in writing. Your view of the greater Golden Horseshoe and the GTA and the densities: What are the challenges Metrolinx is going to have to deal with in the next decade or so, given those low densities before us?

Mr. Lee Parsons: In my opinion, it's not really a chicken-or-egg thing as far as density is concerned. You must have transit first, and not just rail-type transit but all forms of transit. So I think that the objective of moving to higher density is obviously key throughout the GGH, and transit is the key to making that happen.

Mr. Peter Tabuns: Do you feel that your board should—and I'm not talking about doing it in a "call in the Toronto Star" kind of fashion—be advising the provincial government when it sees planning decisions that are adverse to the development of public transit?

Mr. Lee Parsons: No, I don't think so. I think that Metrolinx and all transportation agencies have a responsibility to comment on policy as per whatever their mandate may be, but I don't see it as a situation where there should necessarily be a direct link between one and the other. I think that one of the things that Metrolinx itself is doing which I think is very important is, through Big Move, focusing on mobility hubs and looking at ways of leveraging transit that's in the purview of Metrolinx, ultimately to improve densities.

Mr. Peter Tabuns: On another issue, you chaired the risk management committee for GO.

Mr. Lee Parsons: I did, yes.

Mr. Peter Tabuns: Can you tell us what that entailed?

Mr. Lee Parsons: Yes. We looked at various subject areas for risk. First of all, what it entailed from a board perspective was to highlight issues, bring them forward, discuss them and to ensure that we could recommend as a committee to the board that management was dealing with certain risk issues. Some of those, as examples, related to reputational risk, customer service technology, operational issues and so on.

Mr. Peter Tabuns: Did your committee look at climate change adaptation as a risk to the system?

Mr. Lee Parsons: No, not directly. We're all mindful of that issue in the general sense, but from an organizations perspective we didn't deal with it explicitly. We were sensitive to the environmental issue, I can say, but weren't really expressing that as a global climate change issue.

Mr. Peter Tabuns: Okay. I don't have any further questions.

The Chair (Mr. Ernie Hardeman): To the government. Mr. Brown.

Mr. Michael A. Brown: Thank you, Mr. Parsons, for appearing today and for putting your name forward. We appreciate your commitment to public transit, as demonstrated through the GO board and now accepting this opportunity to serve with Metrolinx. Your credentials, again, broaden the interests and the expertise of the board. We think you're a fine appointment and we will be concurring in your nomination.

The Chair (Mr. Ernie Hardeman): Official opposition. Mr. Wilson.

Mr. Jim Wilson: Thank you, Mr. Parsons, too. Obviously you've done yeoman's work for transit for many years, and I'm happy to see that you want to continue on

Metrolinx. I did ask one of the new vice-chairs of Metrolinx—I can't remember exactly who it was—about three meetings ago whether GO or Metrolinx has had—I represent the Tottenham area, going up through to Collingwood and Thornbury. I'm often asked—mostly, it seems, by real estate agents—whether or not GO Transit is ever coming to Tottenham. For the record, what would your response be to that?

0850

Mr. Lee Parsons: I don't have a useful response to that. But taking your question seriously, the question of expanding the reach of transit generally is something that certainly everybody in the transit business is interested in. Whether or not transit goes to a particular area, or what type of transit or when, that would be up to management to bring something forward.

Mr. Jim Wilson: So that's their best approach, to go to management and put a case together? My riding is the borderline of the GTA, Highway 9, and I don't know if you can make the parking lots any bigger; there are several of them for people who are carpooling right now. The line from Toronto to Barrie seems to be successful. They're just wondering why it can't stop in Tottenham.

Mr. Lee Parsons: I don't have an answer for you, sir, but I would suggest, if you haven't done it already, that you put the question directly to the management of GO.

Mr. Jim Wilson: Then why do we have a board if you guys don't advocate for us?

Mr. Lee Parsons: Actually, that's a very—

Mr. Jim Wilson: If I said that to my constituents, they'd fire me. "Go see the deputy."

Mr. Lee Parsons: Sir, with respect, you've asked a bigger question, and that's "What's the role of a board?" generally. Although the board members—I, certainly, and I'm sure all the others—have definite opinions about various things, the role of the board is really to represent the overall stakeholder of the crown corporation, which is the people of Ontario. We're mindful of that, but it's management, of course, that proposes strategy and runs the organization. The board's job is to oversee that and to make sure that things are done in an appropriate way, heading in the right direction and reflecting the needs of our shareholders.

Mr. Jim Wilson: Okay, thank you. I think Mr. O'Toole had some questions.

Mr. John O'Toole: Yes. Thank you very much, Mr. Parsons. My riding is Durham, and it's the eastern end of the GTA. I've also had the privilege over the last couple of years of serving as the transportation critic and I've watched the work and also the growth of transit. My question is quite specific because I am familiar with the overarching report, The Big Move. I call it the big spending program, actually. It's about \$50 billion or more. The question, right from the beginning when it was introduced—I don't think there's anyone opposed to the strategy and the longer view of things. How do you think they're going to fund that?

Mr. Lee Parsons: Well, that's one of the major questions that is being put ultimately before the board.

Obviously there are the three foci, if you will. One is operations and making sure that Metrolinx is discharging its responsibilities through GO right now. Second is dealing with the implementation of the five projects that have received commitment and funding. Ultimately, the third question is exactly what you say. That is, that we know a couple of things. We know that transit is vital to the GGH as a whole. We know that the price tag for that investment is high. We believe that the benefits of that investment will be much higher. The question is how to actually finance it.

Mr. John O'Toole: That's sort of the larger question that I asked. You left it as a question, and I agree it's probably the largest stumbling block. I'm going to put a couple of things on the table that are related to the question. For instance, it really is a trade-off between the environment, the economy, infrastructure—car versus transit, basically. Would you support tolling to be a portion of the revenue line for transit?

Mr. Lee Parsons: I think that we have to look at the whole mix of transportation. By the way, I don't really see the environment, the economy or even finance as an either/or. The question is, how are we going to do these things? I think it's important to keep our eye on the economic question and keep our eye on the others, as well.

As far as a specific means of raising the finances to pay for and operate the balance of transit, I think we have to be open-minded and look at everything. If you're asking me personally, I don't have an opinion one way or the other. I think that everything has to be looked at very carefully. Each tool has its upside and downside.

Mr. John O'Toole: Yes, for sure. I'm very happy, actually, with the governance model of Metrolinx. When I was critic and the Toronto Board of Trade lobbied extensively, we worked with them to try and convince the minister of that time, in the previous government, to make the move and to reorganize.

The original board was set up prior to Metrolinx and gave the ministry two appointments: the chair and deputy chair. They ran the whole thing invisibly through the ministry. It was structural gridlock because Toronto had, I believe, six seats; the rest of the regions had five amongst them; and the ministry had two: the chair and the vice-chair. They basically ran it, and it achieved absolutely nothing. It was gridlocked from day one through organization, not from the goodwill of the—I met with Smith and others.

I just want your view on this. I felt that the block—I wouldn't like to blame Adam Giambrone or Howard Moscoe or any of those people, but they couldn't even move forward with the smart card, the Presto card.

What's your view on that? Is the governance model going to solve some of this political territorialism?

Mr. Lee Parsons: Yes, I believe it will. I can't comment on the previous Metrolinx board, obviously, not having been there. What I can tell you is this: The group that is on the board now—and I know you've heard this from other folks, my friend Mr. Gagliano just recently—the quality of the people on this board is astonishingly, exceptionally high. These people are charged with the

responsibility of operating Metrolinx and achieving its mandate.

I know that politics is still involved, obviously, in things at various levels. All I can say is that this board is an apolitical board. Everyone is very interested in doing what's right for our shareholder, which is the people of Ontario.

Mr. John O'Toole: Theoretically, I agree that the model is sort of apolitical and I completely concur. I think there's always going to be the discussion of who pays. You've got kind of a non-elected board sort of gerrymandering a \$50-billion project. It's a huge commitment, and it's a significant change in how we do things.

I've always felt that Durham region was basically the poorer cousin in the whole business. I guess that comes back full-circle to my question. If it's non-political, to the extent that they're all appointed by the sitting government—qualified people; I've looked at the members of the board. I think they are qualified—highly qualified, as you say. They're making decisions to the tune of \$50 billion to make all this thing work, which, again, I probably support for the reasons of the economy, gridlock, the environment, CO₂ emissions. I charge you with that, knowing full well the scrutiny at the political level will be high because there is no money. Basically, they have to finance everything.

So, I'm wondering, are there any other innovative financing suggestions, with your background and the distinguished panel, that you could come up with? Does it have to be all public? Is there a commercial layer here available, or is it strictly more tax money?

Mr. Lee Parsons: Obviously, I don't know the answer to that, and no one does right now. But my personal view would be that, really, we have to look at everything and be willing to deploy, or at least examine the deployment of, every possibility.

As I said earlier, sir, there has been a lot of experience now with private-public partnerships, congestion tolls, advertising of various types, operational approaches of various types and implementation approaches of various types. What we need to do is keep our eye on the ball. We need to find a way to implement a very ambitious but very necessary transportation plan, and I think we have to look at absolutely everything.

0900

The Chair (Mr. Ernie Hardeman): Thank you very much. Time is up.

Mr. John O'Toole: I was just sort of getting the feel of it all. Very good. Thank you very much.

The Chair (Mr. Ernie Hardeman): Thank you very much, Mr. Parsons, for being here this morning and enlightening us on your position and qualifications. We do wish you well in your future endeavours.

PAUL BEDFORD

Review of intended appointment, selected by third party: Paul Bedford, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): The third one was previously the fourth one, because we are slightly ahead of schedule, and the fourth delegate is here. Paul Bedford, if you could come forward. We will then revert back to the previous one once she arrives.

I thank you very much again for being here and even being here early. It helps us out with our timing. We'll provide you with a few moments to make your presentation to the committee if you wish to do that. At the conclusion of that we will have questions: 10 minutes allotted for each party, if they wish to use it. We will start that questioning with the government caucus. At the end of that, hopefully, we will conclude it and all be much better informed because of it.

Mr. Paul Bedford: Thank you, Mr. Chair and members of the committee. I really welcome this opportunity to be here and be considered for appointment to the Metrolinx board. I've been looking forward to meeting with you for quite some time, and I think this is a great forum to exchange thoughts and ideas.

I have just a little bit about me and my background first, and then what I'd like to do is talk about what I see as some of the challenges, the opportunities and the priorities that the board is going to face.

I also was born at St. Mike's hospital, for whatever that's worth, a native Torontonians. I haven't owned a car since 1992; I'm totally a transit person. I live downtown, which makes that possible. As many of you know, I was the chief city planner for the city of Toronto for eight years, the first chief planner of the amalgamated city. I served with eight mayors, from David Crombie right through to David Miller, and hundreds of city councillors. Next year, actually, I'll have 40 years of work experience as a planner in a variety of capacities, all with the public sector.

While I was with the city, I was also chair of a group I invented called the Strategic Transportation Planning Group. It was comprised of the five commissioners: myself, city public works, GO Transit, TTC and the parking authority. I wanted to convene that forum every two months to try to get on the same page. It was a useful exercise. I've also developed the city-wide official plan for Toronto, which is a very strong, transit-focused plan which was adopted by the city council in 2002.

As you know, I've served on the transition board, one of the few members, initially from early 2007. I was one of the four city of Toronto appointees. At the time, the mayor had an opportunity to appoint a designate, and he asked me to serve on that. I was honoured to do that and served on the transition board since May, and now I'm before you.

Just some of the challenges, opportunities and priorities I thought important: I think they're really quite simple. We have to catch up on 25 years of lost time and plan for the next 25 years, and that is a massive undertaking. The figure that's been indicated at \$50 billion is what's staring us in the face. That's for capital only. If you add operating, renewal and maintenance over 25 years, my personal view is we're probably looking at

\$80 billion-plus. This is an enormous task before us. That's the first thing.

The second, I think, relates to the whole hand-in-glove fit of the Places to Grow growth plan for the greater Golden Horseshoe and the role of Metrolinx. They've got to go hand in hand. I see Metrolinx as a body that, in fact, can help implement and achieve the vision that's contained in the Places to Grow plan.

I think it's pretty obvious that we'll always have cars, whether they be electric or other forms of fuel, but the reality is that what we have to do is give people more of a transportation choice. Right now, in so much of the region and in 905, people don't have that choice. They basically have to own at least one car, if not two. I think that's an important issue to face down the road.

Some other highlights: I just mentioned the integrated fare card, the Presto card. I'm a strong believer in that. I've had the good fortune to travel to many cities all around the world. Many of you probably have, and you've used those cards and they're absolutely fantastic. It's the right way to go.

When I was on what I'll call the Metrolinx 1 board, there was reluctance on the part of the TTC to buy into this. I actually thought that they should have bitten the bullet on that a long time ago, but it was simply the reality of a \$250-million cost. My understanding is that now they're part of it.

Another area that I feel very strongly about, and I think it's important because we're going to all face it, is electrification of the GO network. As I think you know, there's a study that's going to be commenced later this month. The results would be due December 2010. This is something that I think is absolutely important, because everywhere else in the world, these commuter rail networks almost exclusively are electrified. I think we all know that's where we should go; that's where we have to go. I'm looking forward to the study results when they come forward.

A couple of other quick things I'll mention: One of the most important, if not the most important, challenges we have is, how are we going to pay for all this? What are the different revenue sources? Money doesn't fall from the sky.

There are three baskets of revenue opportunities that I think this board has got to really look hard at. The first is what I'll call beneficiary charges. The best example I can give you is in Hong Kong, if you've ever been there. They have a system called value capture. The system expands the network. It invites developers to come in and build these mobility hubs, and they take a portion of the increased value that the developer enjoys around those stations. That's one of many.

A second area is—and all of these are controversial, I have to say—user fees, and that refers to the gentleman's comment, for example, about road pricing or road tolls. It refers to additional levies, whether they're vehicle registrations or parking levies. There's a whole variety of things. I think we're going to have to be very, very serious and look at all of those options.

The third basket is what I call the financing strategies, and that's also controversial, because we all know that there are different approaches that have been used around the world. The one thing I do know is, there's never going to be enough money in government to fund this, especially given the health care costs that are, what, 42% of the provincial budget—something like that—and rising.

We're going to have to look at all three of those, and every one of them is controversial. I think that the board is well equipped to take that on.

The last thing I'll say, in terms of some of the challenges and priorities, is that I believe, as we go forward—in my 40 years' experience, I've learned this enough—we have to link choices that are made to consequences, because they are connected. If you make a choice here and you don't provide for a system that we know we need, you're going to pay the price. I think it relates to a prosperous economy and the environment and personal life.

One of the things I found very important in this city is to connect these big-picture choices that we're going to make to people's personal, daily life cycles. What's the most important thing people care about? Time, money, stress—all these kinds of things that gridlock produces. There's a whole bunch of these areas that we're going to have to look at.

Lastly, I'd just conclude by asking: What should be your expectations of me? Frankly, I think this is a dream job for me in retirement. I retired from the city five and a half years ago. I teach at U of T and Ryerson. I serve on the CAMH property committee, the National Capital Commission, the Waterfront Design Review Panel and, of course, the transition board. My heart and soul are in this. I love this stuff. I'm passionate about it. I care about it deeply.

There's a personal reason. In a couple of days I'm going to turn 63, and I want, in my lifetime, to see this stuff built. I want to ride it. I want to see it. I don't want to just keep having more and more studies. It's absolutely critical to me. We are making 100-year decisions. Don't ever kid yourself, because nobody—when you build a subway, a new GO line, LRT, you're not going to rip it up. It's there for 100 years, and we'd better get it right. I think that transit is not a luxury; it's an absolute necessity for this region, and it's the key to a healthy future.

0910

My last comment I leave with you is that I know we can do this. It will be really hard, but I know we can do this, because failure is not an option.

The Chair (Mr. Ernie Hardeman): Thank you very much, and with that we'll start with the government.

Mr. Michael A. Brown: Ms. Albanese has a question.

Mrs. Laura Albanese: Thank you for your comments. I know that Metrolinx is working very hard on different fronts to make all of this happen. As you know, there is one project in particular, if not more now, that Metrolinx is working on that concerns my community. One of these projects has been quite controversial; it's

the GO expansion and the air-rail link project. The community has been working very hard to ensure that York South-Weston would benefit from this project.

What I would ask is—you were asking what we would expect from you. That would be the passion that you're showing, to ensure that this board communicates well with the community and that there's the least disruption as possible. As we've seen, these projects can be quite disruptive.

But I also realize that this could be a catalyst for economic development in my community. I know you have extensive experience in urban planning and you teach planning. I'm aware that one of the courses that you've taught recently saw the area of Weston as a mobility hub. Just last night there was a woman murdered in Weston. It is an area that is very challenged. How would you see that happen?

Mr. Paul Bedford: That's a great question, and there are so many issues there. I think one of the things that is absolutely important for your community, for the Weston community, is the increased frequency of transit that's going to occur. As you know now, the GO train is really a rush-hour experience.

Mrs. Laura Albanese: No train after 6:45.

Mr. Paul Bedford: No. You can go one way but you can't get back. It's pretty ridiculous, and that applies to so much of the region. I think all-day GO service is clearly on the horizon, and it's one of the priorities of the board.

But in terms of the mobility hub, you're right. In the course I just finished at U of T, I focused on Weston as a priority neighbourhood; it's one of Toronto's 13 priority neighbourhoods. I wanted to have the students really investigate the community and integrate the opportunities of the rail expansion with economic development and future prospects. To make a long story short, the ideas have been fantastic: a whole notion of creating mixed, diverse land uses at the mobility hub.

One of the issues with GO, for example, is that almost everywhere in the entire system, it's commuter lots and people rush to the train and they get on. But there's not much in the way of development or mixed-use. That's our next layer of challenges for GO and Metrolinx. There are huge opportunities in Oakville and Port Credit; Weston is a great example. So I see the combination of office—one of the ideas that has come up is in fact George Brown College, a Weston campus right at the mobility hub—these kinds of things. I can go on and on. It's very exciting, and I think this is a positive, not a negative.

Mrs. Laura Albanese: It is—

The Chair (Mr. Ernie Hardeman): That's the time.

Mrs. Laura Albanese: Thank you very much.

The Chair (Mr. Ernie Hardeman): We will go now to the official opposition.

Mr. Robert Bailey: Thank you, Mr. Bedford. I really appreciate your presentation. One thing—Mr. O'Toole has got a number of questions—I wanted to commend you on is riding the transit system. Often we hear from

different people who come in on different issues, but it's nice to hear from someone who doesn't have a car and actually uses the system.

Mr. Paul Bedford: My whole life.

Mr. Robert Bailey: Good. Well, that's good enough for me.

The Chair (Mr. Ernie Hardeman): Mr. O'Toole.

Mr. John O'Toole: Thank you very much. I do strongly and genuinely commend your being on the board. I'll say that right off the bat. I'm just looking at your resumé, and not that I'm any capable person to evaluate it, but you've got all the skill sets that are required, with your history and your expressions and current engagement in the community. It may be a bit Toronto-centred, but I don't mean that to be critical. I'm saying it as an outsider.

Mr. Paul Bedford: I'll just say that my mother lives in Oakville and my sister in Hamilton, so I go all around the region—and I go by GO, by the way.

Mr. John O'Toole: I should say this: I'm a frequent user of the system. My riding is Durham and it's at the eastern end, as I said earlier, and I do take the GO train. In fact, I'm a senior; therefore I get the discount rate.

You make a lot of very, very good points about theoretical modelling of transit. I have travelled. I've used the BART system, and I'm in London pretty well every year. I have two daughters living in England. It's a wonderful transit system, from Kent right through to the other side of London. So I'm well aware of it.

I'm also well aware of the history of transit, not to your level of formal education, but I remember the Christaller central place theory, which was how Europe was built, basically, around concentric circles, and transit worked so well.

What's missing here is, we're a linear development. It's totally inefficient. You run all the way out to pick up the load of cattle or people—roughly the same thing—and then bring them all in, and then there's nothing happening. It is very inefficient use of—well, I guess the capital can be depreciated and stand for 100 years, but the future is my big concern. I'm sharing with you, not that I've already assumed that you're on the board and that's all good.

You've also identified some of the structural problems with the original GTA board, having been part of that. That's why they haven't got the Presto card. That's why it hasn't happened: It's Toronto. Toronto TTC had too much cash in the game and weren't about to divest themselves. That's where you're going to have to be a real mediator in this thing, to allow the regions—where there's growth and transportation nodes not yet developed.

Everybody ends up on the wrong end of Toronto with the current system. That's where the rails are; that's where the space is. We're all at the farthest possible points from the airport. It's completely wrong.

My son is a Cathay Pacific pilot. He lives in this area. He flies from Toronto to New York. He has to get to the Toronto airport. It should be going to Toronto. It should

be going to the north end of Toronto. That's where the opportunities are.

The current mindset is completely backwards, in my view, but I won't get too emotional about it.

Mr. Paul Bedford: I don't mind at all.

Mr. John O'Toole: Well, you'll have a chance to make all these decisions, and I envy your position; I really do. I think you will have a chance to be the cartographer of how we all survive in the future.

But if I read some of the new-thinking people, whether it's Richard Florida or Friedman or any of those people, I'm wondering—I have a couple of kids who are in securities law. They work on the Isle of Man. They're dealing with Hong Kong and they never leave their house. You think, with the information age and globalization, the world-is-flat stuff, that we'll actually be driving to a bank in Toronto to do transactional contract work? I don't think so. Why would you come to Toronto when you could be doing it in the electronic cottage? So we're going to build a zillion dollars' worth of infrastructure, to go where? To the ballgame?

Mr. Paul Bedford: I think there's a question in there for me, and I would love to answer it.

Mr. John O'Toole: Well, no. I'm throwing these theoretical models out to you, to see how you deal with them.

Mr. Paul Bedford: Well, there are a lot of questions, but I'd just like to maybe take a few of them.

First of all, I disagree with you. I actually think that, yes—because there's one thing we forget: People long ago predicted that we'd be working out of homes. Face-to-face contact, like we're doing here today, will never change. People want that and they need that. I think that's an element of it that is important to keep in mind.

The other thing, just in terms of your comments about how the system is all focused on Union Station, basically, is very well-taken.

Mr. John O'Toole: It's upside down.

Mr. Paul Bedford: If you look at the Big Move plan, one of the strengths of that is the connections, let's say, between Mississauga and Markham.

Mr. John O'Toole: That's right.

Mr. Paul Bedford: It's all over the place. It's all day, north-south and east-west. That is the future of the whole region, but it's not an either/or. You have to have a strong downtown core also. You can't just put all the money out there and nothing here. You have to do both, and that's the real challenge, because that's where we have to really get tough with the revenue generating—

Mr. John O'Toole: Well, I'm going to take a bit of time as well.

Mr. Paul Bedford: Sure.

Mr. John O'Toole: Here's the deal: corporately and intimately, large corporations in the world are now investigating—you probably know this—hotelling. They're toasting head offices because it's too much tax. The important social contact you mentioned, through Skype and other technology interfaces: that's how a lot of law is done today. It's online. They're not going to some—all

these pre-trial and discoveries are baloney. They really are doing it in clusters, and they're called digital clusters. 0920

Hotelling is where they get together once a week and they talk about the marketing and their legal challenges and some of their liabilities, but the company doesn't own it. They own nothing. I won't mention the names, because I know of it personally. Large head offices, including law firms in Toronto, are looking at the concept. Look it up; hotelling, it's called.

That's the future. That's the Richard Florida model, where they need to get together to work, the synergies of interaction and all of that. But this idea that I have to go to some cubicle on the 48th floor of some building—that's completely—we're moving from the industrial economy to the new economy, the global economy. My customers are all in Bangalore—

The Chair (Mr. Ernie Hardeman): Mr. O'Toole, can we get back to Metrolinx?

Mr. John O'Toole: Well, I guess I am. I've already conceded he would be—I applaud your enthusiasm, and I completely endorse you. You've got all the qualifications. Don't be quite so Toronto-centric and toast Adam Giambrone and some of those guys. Throw them overboard.

Mr. Paul Bedford: No comment.

Mr. John O'Toole: Whatever. Throw them overboard.

The Chair (Mr. Ernie Hardeman): We'll now go to Mr. Tabuns.

Mr. Peter Tabuns: So, Paul, it's good to see you this morning. See? City council just never really left you behind.

Mr. Paul Bedford: No, no. It's with me for life.

Mr. Peter Tabuns: You've set out your ideas around financing. As you probably know from the questions I've raised before, public-private financing is a concern that I have. I think, ultimately, it reduces the amount of capital that's available and has affordability issues. I know your position, so I'm not going to go on with that.

Mr. Michael A. Brown: We would be interested.

Mr. Peter Tabuns: He already said it.

Mr. Paul Bedford: I'm happy to elaborate.

Mr. Peter Tabuns: But on the question of climate change adaptation, you're quite correct: What we put in place will be here for a century. We will see changes in the weather that will be quite substantial. I asked one of the earlier appointees for their comments on it. Have you been looking at this question in relationship to a regional transit system?

Mr. Paul Bedford: Yes, actually, at one of the strategic sessions in the first Metrolinx board, we had a whole session devoted to the impacts of climate change and the relationship to building a good regional transit system. It's very much part of the thinking.

It's ironic that we're here today with the Copenhagen conference just starting. It is absolutely connected. David Crombie always used to say, as you recall, "Everything is connected to everything." It sure as hell is. Transit, land

use, climate, environment, economy, prosperity: It's all interconnected.

Mr. Peter Tabuns: I don't have any further questions.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation and for coming in this morning. We do wish you well in your future endeavours.

Mr. Paul Bedford: Thank you.

The Chair (Mr. Ernie Hardeman): Hopefully, you'll get it built quick enough to actually see it happen.

Mr. Paul Bedford: I'm with you on that.

ROSE PATTEN

Review of intended appointment, selected by third party: Rose Patten, intended appointee as member, Metrolinx.

The Chair (Mr. Ernie Hardeman): Our fourth interview this morning is with Rose Patten, intended appointee for Metrolinx. Rose, you may come forward. As with the previous ones, we will provide you an opportunity to make an opening statement if you wish. We will then have questions from the three parties at the table, 10 minutes allotted for each one. We will start that with the official opposition. We now turn the floor over to you to make your presentation if you wish.

Ms. Rose Patten: Thank you very much, and good morning. If you don't mind, I'm just going to switch chairs. This is a bit low.

Interjection.

Ms. Rose Patten: Come up in the world; that's right. I always feel like I'm sitting in my father's chair when I get into some of the lower ones.

Good morning, Mr. Chair and members of the committee. I'm delighted to be here. This is a new experience for me, so I'm happy to take a few minutes to talk a little bit about my background and my interest in being considered for the board of Metrolinx.

You saw a little bit of my background, but maybe I can elaborate a tiny bit. I'm currently the senior executive vice-president of BMO Financial and what is called a senior leadership adviser. I run a number of portfolios, "portfolios" meaning functions of the bank. Essentially I'm one of the eight most senior people of the Bank of Montreal.

I have spent my whole career in financial services. Over a span of 30 years, I have been in four large financial services organizations. Throughout the 30 years, my accountabilities in all organizations have centred around strategy, leadership selection and succession, a lot to do with organizational change, and communication of public affairs. Those are the portfolios I've had pretty well steadily throughout, and those are the portfolios I have now at the bank.

In each organization, I have found that I have overseen those kinds of activities at times of quite a bit of change, and I have had to put quite a bit of focus on what I call the linkage between strategy of the business and the alignment of the people. Having had strategy and people over a number of years, that's where I tend to pay a lot of

attention: Are the people aligned with what the company or organization is trying to do?

I have also, in parallel, had pretty well equal experience in the public sector over about 25 years, in fairly senior leadership roles. The one I'll focus on is over the last 15 years, where I've held various senior leadership positions at the University of Toronto in governance. I was the chair of the governing council of the University of Toronto until recent times. I have continued to chair a task force on a review of the governance practices at the University of Toronto.

I am currently also a trustee of the Hospital for Sick Kids, and I chair the governance committee of this as well. I recently became a member of the advisory committee to the Treasury Board of Canada. This advisory committee advises on senior-level retention and compensation, which is the deputy ministers and the CEOs of crown corporations.

When I accepted the invitation to be considered for the Metrolinx board, I had just finished my term at U of T. I did deliberately decide that I wanted to get involved in a big and important public policy in addition to my focus on health and education. The issues for me, and the challenges of public transit, because it touches the public at large, had a high level of interest, although I have to admit I don't know a lot about transportation and that side. That's going to be a learning.

I think the nature of Metrolinx does have many critical elements where I believe my experience and skills can be valuable. I'm particularly attracted to the importance of improving customer service, because as we embark on all of the challenges that are outlined for the Metrolinx mission, unless we retain and grow ridership, it will be very difficult. That, to me, is one of the most fundamental challenges and how to get at that true customer service, from the point of view of the people, which is where it starts. I have a high level of interest in this.

The other dimension of the mandate which had a lot of appeal to me because of my background is planning and executing for the future. There's going to be a multitude of strategic choices, and it will be up to the board to ensure that there is very careful analytical thought to all of the information in order to make sound decisions. That has appeal to me as well.

Lastly is engaging in the complex debate and inclusive consultation.

I believe that those challenges that Metrolinx has in this regard are underpinned by the strong leadership that it will need, as well as the commitment and the mindset of all the people of the organization. I felt that my 30 years of experience in this regard would add value there.

I also believe that strong governance oversight and guidance will be very important, with all these complex situations. Again, I thought my value would be somewhat helpful, and the experience that I've had as well in governance over that many years.

0930

That's my story. I will stop there and be happy to comment on anything that you would like me to. Thank you for listening.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. As I said, we will start with the official opposition.

Mr. John O'Toole: Thank you very much, Ms. Patten, for your presentation. You do bring a lot of skills to the areas that are outside of the transit bubble, which is probably good. The previous speaker was eminently qualified on the technical side, and organizationally it looks like those are strong skills.

I am a graduate of U of T and I know Robert Prichard would be very happy to have you on his team. That's clear here as well. And Roger Martin would be one of the people that I'd really listen strongly to. He's one of your references here. I admire the guy. He's very non-partisan but a very competent policy spokesperson. We'll say it that way.

A couple of questions: I think, with your strong 30 years in the financial services sector—and I did hear the previous speaker talk about the three models on the revenue side—I'd be happy to hear—there's a real challenge here. No one disagrees with the concept, the futurist look of it. It's important to have those visions. But there are two parts. The Metrolinx function is esteemed people who have congregated there and have a mandate legislatively, I guess, but they're going to try to get the money from someone else. They haven't got a guaranteed revenue stream yet. That's critical, because the legislators have got a \$25-billion hole in the ground right now. Social programs exceed capital programs. Which do we want—bridges or people? It's that kind of a question. Would you give me kind of a quick one on that? I'm dealing with the revenue side because that's your strength.

Ms. Rose Patten: Yes. I understand, and I think it is going to be one of the biggest challenges. I've actually attended two board meetings at this point in time, and right from the get-go, the key focus for a lot of the directors is looking at the whole funding side of things and where it's going to come from.

We're only now getting into some of the analytics. In fact, the groups are now working on the analytic models that we need to look at to weigh the pros and cons of this. But I think it is going to be quite a challenge, which is one of the reasons that I place a lot of emphasis on the customer side and the ridership side and continued growth and retention. That won't get us there, but I think it's very fundamental.

But you know, Mr. O'Toole, in terms of the actual funding sources and how that will be looked at and designed, we haven't really begun to look at the whole array of that as of yet.

Mr. John O'Toole: Well, it's very good. That's a very honest answer as well because if there was an easy answer, I think governments would probably have outlined those options. Now, here's the issue: With hospitals and the demands in health care—I don't mean to politicize—what they've got now is a kind of shield outside called LHINs.

Ms. Rose Patten: Yes.

Mr. John O'Toole: They're basically the shield so that you can't get to anybody who's actually elected. I'm not being critical. It's used in other jurisdictions, so it's not a new model. I find that your organization is going to be a similar kind of transit king and queen, shielding the ministry and the Ministry of Revenue, so it's a difficult position. You're going to get hammered because there will never be enough capital and there will be operating shortfalls and there will be capital shortfalls, but there will also be customer service issues. I'm one of the customers. Do you understand? I use it. If you miss the train or if there's a little switch that doesn't work because it's cold out, I'm just pissed, pardon my language. Do you understand? I miss work, I'm late and everybody on the platform—you've got 10,000 upset customers who are going to get on their BlackBerrys, because they're all commuters, and they're going to e-mail you directly. Could I have your e-mail address? I'm just saying. I'm serious. It's a very tough box, because people have destination commitments.

We talked about choice. I think there's a really good choice. I'm going to put this to you as the next revenue question: I'm a commuter, so I make the decision based on listening to CBC Radio news and whatever that guy—with Andy Barrie on there with the news. Really, he should retire. But anyway, the other guy is a young traffic reporter who gives you a glimpse of what's happening and I decide whether to pull in at Oshawa or not. It's about an hour and eight minutes by rail or it's about an hour to three hours on the road, depending on how bad it is.

Would you look at tolling as one of the solutions? You could toll portions of Highway 401, certainly the Don Valley—and I know that Peter Tabuns would probably support that. No? Okay. What do you think of that? That's one of the revenue sources, as well as the traffic management tools you need. That's what the congestion charges in London are for, because nobody drives there any more unless you've got the Rolls-Royce.

Ms. Rose Patten: Yes, I'm quite familiar with tolling from travelling and so on, but I don't know how that will fit within the whole cadre of choices that we would have as we look through this. I don't have a predisposition to it. I think it is one of the choices and it has been used elsewhere, but I don't know how it'll fit with us. We haven't really done the assessment of that as yet.

Mr. John O'Toole: The other part is, we have the discussion on the 407 east expansion, and one of the design components is the light-rail component. Dave Ryan, the mayor of Pickering, as well as Wayne Arthurs, the member from that area, were first out of the gate in terms of supporting a transit median on the 407. I fully endorse that as well. It goes to great destinations: the University of Ontario and other places. Do you look at those? They're not really in the Big Move plan.

Ms. Rose Patten: No, and we haven't had discussions as yet, so I can't comment on that.

Mr. John O'Toole: We did talk about rail electrification, and I think that's—

Ms. Rose Patten: That's part of it, yes.

Mr. John O'Toole: If you're financing, you should get that quickly priced, because it's going to be an environmental nightmare. Some of the biggest polluters are the diesel-operated locomotives.

Ms. Rose Patten: Yes, and you're aware, I'm sure, through my previous colleagues that there's a big study now on the whole topic of electrification.

Mr. John O'Toole: That's right.

Ms. Rose Patten: So that one intrigues me as well. It's very complex, but—

Mr. John O'Toole: And they're all big-ticket items.

Ms. Rose Patten: Very essential, yes.

Mr. John O'Toole: They're huge. Even Presto is like a half a billion dollars, roughly. You've got to dismantle a lot of technologies and turnstiles that are in place, and they're gone with a simple solution. Really, they just need to be—that's a smart card. It has a SIM card in it, so you just walk through the turnstile and it'll bill you. They've got to get with it. They're locked into some solutions too early and there's not enough—the operative word here for customer choice is options.

Ms. Rose Patten: Yes, and I'm hoping that with the diversity of the board—because, as you mention, there's some people with highly technical skills; others with more general analytical kind of—strategic choice. There's such a mixture there. That's what I'm banking on—no pun intended—for getting at some of those issues.

Mr. John O'Toole: Thank you for your willingness to serve. I honestly think that the board, in its mandate, has all of the pieces in terms of the human skills. The revenue side is what's missing.

The Chair (Mr. Ernie Hardeman): We'll call that the conclusion. We do have to recess the committee, and we apologize to the deputant. We will be back after the vote.

Ms. Rose Patten: Okay. Thank you.

The Chair (Mr. Ernie Hardeman): We'll be voting in 3.26 minutes. We will be back immediately after the vote and we will go to Mr. Tabuns for questioning.

The committee recessed from 0939 to 0951.

The Chair (Mr. Ernie Hardeman): We'll call the meeting back to order. Thank you all for your indulgence. With that, we'll start with the questioning from Mr. Tabuns from the New Democratic Party.

Mr. Peter Tabuns: Ms. Patten, thank you for coming this morning. You clearly have an extensive background in public and private institutions and management. I'm very concerned about public-private financing. I'm concerned about its costs to the public sector, and I'm concerned ultimately about the costs that will be borne by individual users of our institutions. Do you support the use of public-private financing in the development of our transit system?

Ms. Rose Patten: I don't know how I view it in the sense of its true do-ability. I believe that it's very complex. I think it is one source, and it has a flavour to it that could be attractive to people. I see it as very, very complex. I see it as requiring an enormous amount of

analysis and careful thought from different angles. These kinds of structures are not always what they seem to be. They can be very, very complex.

Mr. Peter Tabuns: Does your bank provide financing in this realm for infrastructure?

Ms. Rose Patten: I believe that we do have some relationships, yes. I don't know the specific detail of what they are because I'm not in that side of the business. But I would believe that we do. I believe that most banks would, and I'm pretty sure that we would as well.

Mr. Peter Tabuns: Do you believe that that would put you in a conflict of interest at any point?

Ms. Rose Patten: I believe that if, in fact, there was a situation being discussed that in any way included financing and the banks, I would excuse myself, for sure.

Mr. Peter Tabuns: Okay. I have no further questions. Thank you very much.

Ms. Rose Patten: You're very welcome. Thank you.

The Chair (Mr. Ernie Hardeman): Now we'll go to the government. Mr. Brown.

Mr. Michael A. Brown: I really don't have a question, Ms. Patten, other than to thank you for putting your name forward for this board. You bring a background that will add significantly, I think, to the board's structure. We are most impressed with your credentials. Thank you very much for volunteering your time to sit on this very important board. We will be concurring in your nomination.

Ms. Rose Patten: Thank you.

The Chair (Mr. Ernie Hardeman): That concludes the questioning, and we thank you very much. First of all, we apologize for having to go away and leave you here by yourself until we got back from the vote, but we appreciate the fact that you put your name forward and came forward. We wish you well in your future endeavours.

Ms. Rose Patten: May I also say thank you to all of you? As I said at the beginning, this is a new experience for me. I have a lot to learn in terms of what Metrolinx is doing, but I'm also very keen to apply my own frameworks of thought to ensure that the objectivity and the careful diligence take place. Thank you all.

The Chair (Mr. Ernie Hardeman): Thank you very much. That concludes our interviews this morning.

We will now move to concurrences. We will consider the intended appointment of Tony Gagliano, intended appointee as a member of Metrolinx. Do we have a motion?

Mr. Michael A. Brown: I move concurrence in the appointment of Tony Gagliano as a member to the board of Metrolinx.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Any discussion?

Mr. Peter Tabuns: I just want to clarify before I vote: I mean no disrespect to any of the appointees who are before us today. All of them have strong resumés. My sense from the presentation is that they will make intelligent contributions to the board. But I don't support public-private partnerships, and no one rejected them.

Thus, I can't support them as applicants, but I don't want it to be a reflection on the quality of the people themselves. The quality has been one that gives me some comfort.

The Chair (Mr. Ernie Hardeman): Any further discussion?

Mr. Michael A. Brown: Recorded vote.

The Chair (Mr. Ernie Hardeman): Recorded vote. All those in favour of—

Ms. Lisa MacLeod: If I might just be able to comment: I was subbed out today. Unfortunately, Mr. Wilson and Mr. Bailey have gone to the House and have not returned, so I do not have a vote. But your qualities and your qualifications, from when I was in here, seem to be great. Certainly Mr. O'Toole enjoyed you, so—

Mr. Peter Tabuns: And vice versa, I'm sure.

Ms. Lisa MacLeod: —and we enjoyed Mr. O'Toole along the way. There's no one here who can do the vote from the official opposition.

The Chair (Mr. Ernie Hardeman): Thank you. Now we'll go to the vote.

Ayes

Albanese, Brown, Johnson, Naqvi, Pendergast.

Nays

Tabuns.

The Chair (Mr. Ernie Hardeman): The motion is carried.

We will now consider the appointment of Lee Parsons, intended appointee to Metrolinx.

Ms. Lisa MacLeod: Just as a clarification: Again, I just want you to know that throughout the entire set of votes, I am unable to vote because I'm not officially subbed in.

The Chair (Mr. Ernie Hardeman): We appreciate that. Thank you.

Mr. Michael A. Brown: Mr. Chair, I move concurrence in the appointment of Mr. Lee Parsons as a member to the Metrolinx board.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Any further discussion?

Mr. Michael A. Brown: Recorded vote.

Ayes

Albanese, Brown, Johnson, Naqvi, Pendergast.

Nays

Tabuns.

The Chair (Mr. Ernie Hardeman): The motion is carried.

The third is to consider the appointment of Rose Patten, intended appointee to Metrolinx.

Mr. Michael A. Brown: Mr. Chair, I move concurrence in the appointment of Rose Patten as a member to the Metrolinx board.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Any discussion?

Mr. John O'Toole: Friendly disclosure, Chair: I also have respect for the delegation this morning. As I'm not an official member of this committee, I am unable to vote. That will explain, for the purpose of the record, why I didn't vote.

The Chair (Mr. Ernie Hardeman): Thank you. All those in favour?

Mr. Michael A. Brown: Recorded vote.

Mr. Peter Tabuns: Recorded vote.

The Chair (Mr. Ernie Hardeman): It's recorded, yes.

Ayes

Albanese, Brown, Johnson, Naqvi, Pendergast.

Nays

Tabuns.

The Chair (Mr. Ernie Hardeman): The motion is carried.

We will now consider the appointment of Paul Bedford, intended appointee as a member of Metrolinx.

Mr. Michael A. Brown: Mr. Chair, I move concurrence in the appointment of Paul Bedford as an appointee as a member to the Metrolinx board.

The Chair (Mr. Ernie Hardeman): You've heard the motion. Any discussion?

Mr. Michael A. Brown: Recorded vote.

Ayes

Albanese, Brown, Johnson, Naqvi, Pendergast.

Nays

Tabuns.

The Chair (Mr. Ernie Hardeman): The motion is carried.

That concludes the concurrences. Unless there's any further business for the committee, that concludes the meeting. The next meeting will be at the call of the Chair.

The committee adjourned at 0959.

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Lundi 1^{er} février 2010

Standing Committee on Government Agencies

Intended appointments

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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Monday 1 February 2010

Lundi 1^{er} février 2010*The committee met at 1005 in committee room 1.*

SUBCOMMITTEE REPORTS

The Chair (Mr. Ernie Hardeman): The hour of 10 o'clock has arrived, so we'll call the meeting to order. First of all, we want to thank all the committee for agreeing to have this meeting today so that we can get some of these reviews completed.

We'll start the meeting dealing with the report from the subcommittee dated Thursday, December 10, 2009. Do we have a motion to accept the subcommittee's report?

Ms. Lisa MacLeod: I'll move that the subcommittee report be recognized and adopted.

The Chair (Mr. Ernie Hardeman): We have a motion to accept the subcommittee's report. A seconder? Any discussion? If not, all those in favour? Opposed? Carried.

Next is the report on subcommittee business dated Thursday, December 23, 2009. Motion to accept the subcommittee's report?

Ms. Lisa MacLeod: I'll move it.

The Chair (Mr. Ernie Hardeman): Secunder? Any discussion on the report? If not, all those in favour? Opposed? The motion's carried.

The third item is the subcommittee report on business dated Thursday, January 21, 2010. Motion to accept?

Ms. Lisa MacLeod: I'll move it.

The Chair (Mr. Ernie Hardeman): Secunder? Discussion on that motion?

Ms. Lisa MacLeod: It was a great day; it was a great meeting.

The Chair (Mr. Ernie Hardeman): That's the subcommittee report that I'm authorized to recommend at today's meeting. No discussion on this? All those in favour? Opposed? Motion's carried.

That concludes the business of the committee.

INTENDED APPOINTMENTS

MR. RAYMOND HESSION

Review of intended appointment, selected by official opposition party: Raymond Hession, intended appointee as member and chair, eHealth Ontario.

The Chair (Mr. Ernie Hardeman): We are meeting today to review appointments. The first one to review is

Raymond Hession, intended appointee as a member and chair of eHealth Ontario. Mr. Hession is with us. If you would take a seat at the head of the table.

We first of all thank you for coming in, and we will ask you if you wish to make an opening statement. We would be happy to hear that and provide you that opportunity. With that, we will then go to questioning. We'll start this interview with questioning from the third party. Each party will have 10 minute to ask questions, and at the end we will conclude the interview.

With that, Mr. Hession, we ask you to make your presentation, if you so wish, and then we will proceed.

Mr. Raymond Hession: Thank you, Mr. Chair. It's a privilege for me to have this opportunity. I'm naturally especially interested in the questions and what they will evoke in terms of the priorities of the members here, and I hope I get a chance to share with you some of my own beliefs about the circumstances in which we find ourselves.

My remarks will be very brief. I'm sure you're happy to hear that. I just want you to know that my roots in the information management, information technology world as it relates to medicine and to health go back to 1967, when I was appointed by IBM Canada as the industry marketing manager responsible for medical—the industry was called that at the time. In those days, most of the applications of information technology related to the so-called back office functions of hospitals—primarily that—the whole process from admission to discharge and all of the transactional activities that take place during a hospital stay. Many years later, I found myself in a series of governance responsibilities in a number of health institutions in Ontario, most recently as the founding chair of the Ontario Health Quality Council. It is in that context that I'd like to, if you'll permit me, go to each of the four reports rendered by my council, beginning with the 2005 report, focused very specifically on the subject at hand.

First in 2005—and I am paraphrasing and quoting here—the report said, “Early implementation of electronic health records is the single most important step toward a competent health information management environment. Without it, Ontario cannot fully support continuous quality improvement.”

In 2006, again paraphrasing from the report: Good care is also integrated, which means all the information gathered by a range of different health care providers

must be shared, available to all providers efficiently and quickly, stored in a way that respects patient privacy and used to provide the best possible care.

Again, in 2007: “Electronic records help physicians avoid errors due to incomplete information and avoid repetition of tests. They allow up-to-date information to follow the patient across the continuum of care, so each health care provider has access to necessary information. Ultimately, patients themselves should have secure, online access to their own records so they can participate more knowledgeably in their own care.”

Finally, in 2008, eHealth is “seen as crucial to operating a high-performing health system ... in Ontario.”

Mr. Chair, if your committee supports my nomination by the government as chair of the board of directors of eHealth Ontario, we, the board, will move quickly to establish strengthened governance and, in particular, become a disciplined and collaborative integrator, emphasizing the public value—led, importantly, by a seasoned new chief executive officer. Secondly, we will build an image and reputation based on the quality of our solutions and of the services we provide. Finally, and importantly, we will achieve the outcomes stipulated in the eHealth strategy.

1010

With that, Mr. Chair, I'd invite you, if you would, to put questions.

The Chair (Mr. Ernie Hardeman): Thank you very much for your presentation. We were going to start with the third party, but I see the third party is not yet present, so we will start with the government. Hopefully by the time that we get to the third party, they will be present.

Ms. Lisa MacLeod: Chair, may I ask why, since the intended appointee was selected by the official opposition, the official opposition isn't starting today?

The Chair (Mr. Ernie Hardeman): The reason for the circulation: It's a standard. With the last person we interviewed, we started with the official opposition, this time we start with the third party, and the next time we will start with the government side.

Ms. Lisa MacLeod: He's the first appointee. So we're going with the rotation from the last meeting?

The Chair (Mr. Ernie Hardeman): From the last meeting. And because you interview different numbers each meeting, it wouldn't be fair to always start with the same party.

Ms. Lisa MacLeod: Okay.

The Chair (Mr. Ernie Hardeman): So we'll start with the government side. Yes, Mr. Balkissoon.

Mr. Bas Balkissoon: Good morning, Mr. Hession. Thank you for being here.

The government has brought in some new rules on procurement, consultants, expenses etc. How do you see your past experience helping to ensure, in this eHealth Ontario position that you're applying for, that we do get compliance with those new rules and regulations that we've put in place?

Mr. Raymond Hession: Thank you very much for your question. Members may know that I, in an earlier

life, was the deputy minister federally responsible for procurement, so, without any bravado here, I have a considerable amount of experience in the subject matter. But more recently, I've served as fairness commissioner on two major capital projects involving the government of Ontario: one, the design, building and construction of the Royal Ottawa Hospital, which is a large, new, modern mental hospital; and secondly, more recently, the Ottawa Convention Centre, which is transforming what was an 80,000-square-foot facility—not much for a city of the significance of Ottawa—to a 200,000-square-foot facility. That's a little advertisement there, Mr. Chairman. In any event, both of those projects, under my monitoring and guidance, have gone—it would be represented by all parties—very smoothly.

I tell you that because I have a lot of sensitivity to the issue of procurement and how, in the public sector, it ought to be managed. It starts with effective policy. I'm aware of the government's recent changes in policy with respect to competition, in particular in the acquisition of consulting services. I favour that very much. The record would show that when deputy minister of procurement for the federal government—in those days, coming into the job, the procurement distribution between single-sourced contracting and competitive contracting was about 50-50. It was not a pretty picture. We moved aggressively and quickly to shift that ratio as far as we could take it in favour of competition.

I would just add parenthetically that it was also a move away from the highly prescriptive tendering processes—which you don't see much of in Ontario; some, but not much—to the request for proposal, which obviously opens an opportunity for the vendors not simply to meet the requirements as stated by the government, but also to offer innovations that the government may find attractive. The simple idea there is that you don't want to assume, as government buyers, that you know it all. Generally, we don't, because the world moves very quickly, particularly in the technology world. You need to encourage innovative responses to your problem statement.

So in principle and in fact, I strongly support competitive procurement. And in the rare circumstance where arguments are presented to single-source something, particularly in a services context, if it isn't an emergency having material impact on the project or program, then it generally isn't worthy.

The Chair (Mr. Ernie Hardeman): Thank you. Further questions?

Mr. Bas Balkissoon: Yes. The Auditor General of Ontario's report pointed out issues with board governance and oversight at eHealth and made several recommendations to improve the board's ability to meet their responsibilities. I understand that the current eHealth staff and the board have been working to implement some of those recommendations. Can you describe a little bit about your approach, how you would ensure that the auditor's recommendations are in place and what kind of priority you would put to it?

Mr. Raymond Hession: I've read the auditor's report. It's in the public domain, needless to say. I find his findings, conclusions and recommendations compelling. I take them at face value, naturally, because I don't have intimate inside information regarding that agency.

I would say that the number of moving parts that constitute eHealth are daunting, that the strategy is very ambitious, both with respect to content and the expected outcomes by certain points in time. "Doable but daunting" is how I describe it.

In these circumstances, where we've seen so much turmoil in the governance and leadership of the agency—change, no doubt intuitively, anticipating some morale impacts on the staff in the agency—I hold a fundamental belief that the governing body and the executive need to be more tightly coupled than, as far as I can judge, has been the case in the past. By that I mean that boards at times operate, to a degree, at arm's length. It's an advice and consent relationship between management and the board. In this instance, given all the moving parts, given a new CEO, a new chairman, a number of new board members, I believe that an executive committee of the board is a necessity, an absolute necessity, such that that tight coupling can occur and that there is an information flow between the two parties that enables proper accountability on the one hand but also maintains a pace of activity that goes with a lot of moving parts.

The Chair (Mr. Ernie Hardeman): Thank you very much. That concludes the time for the government side. Ms. MacLeod, from the official opposition?

Ms. Lisa MacLeod: Welcome, Mr. Hession. It's nice to have you before us today. I was fortunate to make your acquaintance previously, when you were with the Ottawa Hospital and the organizations there.

It seems to me you have probably one of the biggest jobs in Ontario today. You have to do two things: You have to make sure that we have electronic health records in Ontario, but you also have to be the person who restores public trust and confidence, and stability, at eHealth Ontario. We've now had three chairs in the last six months. The public does not believe a billion dollars was spent effectively at eHealth and we don't have much to show for it.

I guess the question I have, to start off with, is how are you going to do that? How are you going to restore the public's confidence? How are you going to bring stability to the organization? How are you going to ensure that electronic health records are going to be made available to Ontarians, and what's your timeline for that?

Mr. Raymond Hession: First, the preamble to your question: I am in complete agreement with the circumstances with which we're confronted. Image and reputation, or branding, is a dominant factor, both with respect to the public perspectives on eHealth and the agency and, frankly, I imagine—again, this is intuition speaking—internal to the agency itself: confidence in its own efforts and in the recognition of its work.

1020

It is in that latter context that I feel image and reputation will certainly not be remedied—that is to say,

the difficulties currently experienced—by hand-waving. Hand-waving is not what's needed in the present circumstances. What's needed in the present circumstances we have in large part found in the strategy. There is indeed a direction which, although I didn't cite that in my earlier preamble, my own remarks—that's relatively new, the strategy, but it's a critical component of a successful outcome.

The strategy needs to be translated, in the context of the work to be done, into an architecture. I know that may sound a little high in terms of use of language, but the fact of the matter is, unless you know quite specifically what it is you're going to build, you run reasonably high risks of failure. So we need that architecture.

The architecture starts with what in the trade is known as a solutions architecture. Solutions in this business—we're talking here about health—oddly don't necessarily imply a whole lot of technology; some, but it implies significant human factors to be considered in persuading physicians, nurses, nurse managers, allied health workers and so on to alter the way in which health services are delivered in light of the existence of the EHR and other technologies. So that suggests to me that it will be a results-driven strategy to recapture the trust and confidence of the people of Ontario, the people within the agency, and those in the health sector. My hope and expectation is that with the architecture, clearly defined, flowing from that strategy, we will begin to see real product, good quality, results, and that's what will begin to reinvigorate the image and reputation of the organization.

I know I'm taking a lot of time and I'm sorry—

Ms. Lisa MacLeod: I do actually have a follow-up question. I agree with you that we do have to know where we're going before we start driving, and unfortunately it does not look like that had occurred throughout the history of eHealth.

I'm going to move on, because the Auditor General estimated that two thirds of eHealth contracts were untendered, which says to me that there's considerable rot there. You're going to have to root that out and basically resuscitate eHealth.

The question I have, because it appeared that Mr. McGuinty and his cabinet had a quite considerable influence on the previous chair and the CEO—I have two questions. Have you met with the Premier or anyone from the Premier's office, or the Minister of Health or her office, about this and gotten a briefing on eHealth and where things stand today? And then I have a very important question to ask you: If you do notice that eHealth is slipping away and we're spending millions on untendered contracts or services that we're not getting good value for, are you going to be able to stand up to the Minister of Health, are you going to be able to stand up to the Premier of Ontario, so that taxpayers are not going to be on the hook for another billion-dollar boondoggle?

Mr. Raymond Hession: Let me answer the second question first. I've just spent just under four years chairing the Ontario Health Quality Council and I've

been reporting faithfully each year. Those reports, again, based on third party commentary, have been very well received throughout the health sector. I took it upon myself during that time to brief the critics of all parties, as well as the minister, of course, each year, expecting, as was the case, that each of those leaders had a compelling interest in the content. From my point of view, I did not want to be, nor was I seen to be, anybody's toady. I spoke for the council, and the council spoke on behalf of Ontarians with respect to the performance of the health system. A large part of that speaking had to do with the very subject we're here to talk about today.

So on the question of whether I had met with anybody in the Premier's office, the answer is no, with the exception of one person who operates the appointments process for the government. That, I thought, was a pretty—in fact, there was no question it was very much a process type of thing. I signed an application and so on, and I'm here today.

With respect to the minister, I have met the minister once, briefly, and it was a courtesy call. We shook hands, we spoke for a very brief period, and she then exited the meeting to go into the Legislative Assembly. I've had one briefing with the interim chair of eHealth, who gave me largely pro forma information on the then-current content of the board. And I've met with the minister's chief of staff—again, in follow-up to the process discussion I'd had with the deputy chief of staff, appointments—simply to affirm the timing of this meeting, for example, and logistical things of that nature, but nothing substantive. In fact, there's been a meticulous, careful process to avoid giving me any information beyond what's in the public domain, and that's indeed the case.

Ms. Lisa MacLeod: Do I have any more time?

The Chair (Mr. Ernie Hardeman): Yes, you have another three minutes.

Ms. Lisa MacLeod: The question, I guess, again goes back to the sole-sourcing of a number of significant contracts and the challenges that eHealth is now going to face. There are great expectations: again, bringing back the public confidence, but also getting results.

One of the things that I've talked about in my travels with my leader, Tim Hudak, in the past couple of weeks, meeting with hospital administrators—they're telling me that the new rules Mr. McGuinty has brought in are actually slowing some capital projects. I wonder if you have an opinion on that. Is this going to help or hinder? At the time, it seemed like a knee-jerk reaction, rather than listening to people when the issues at eHealth started to crop up and trying to stop them then. We now notice that he has clamped down very quickly, and what we're hearing is that it's bottlenecking a lot of these capital projects.

Mr. Raymond Hession: I have no doubt that it's changing the nature of the contracting process. I have no doubt that one dimension of what the eHealth agency is now doing is laudable, and that is the creation of a procurement plan and strategy that paces out over a lengthy period of time those increments of procurement

that will be undertaken. Why I think that's a great idea, going back to my own experience at the federal level, is because without a procurement plan, arguably it would be a bit of a chaotic managerial process, given the number of moving parts in all of this, to find each of those procurements taking place in an unplanned fashion and not really knowing how it all fits together.

In 2002, under an emergency condition, I found myself running a project which had run aground with the former government, with the Harris government, involving the welfare system in Ontario. I was brought in on an emergency basis to put it right. This is the infamous Andersen Consulting contract, and it was well into its second year by the time I came on the scene. One of the first things I did in running that was to put a procurement plan and strategy together so that my staff knew exactly the sequence and exactly the scope of what was coming. In each case, the contracts were the result of competition.

Again, once people know in advance what's coming, then they can prepare. So the idea of bottlenecking—it may appear that way at the outset, but it goes away as you execute that plan.

The Chair (Mr. Ernie Hardeman): Thank you very much. That concludes the time. Since the third party has not yet arrived, that concludes our interview. We thank you very much for your participation and we wish you well in your future endeavours. We will be dealing with the concurrence on this following all the interviews today. Thank you again for coming forward.

Mr. Raymond Hession: Thank you, Mr. Chair. Thank you to the members.

MS. SUSAN WHELAN

Review of intended appointment, selected by official opposition party: Susan Whelan, intended appointee as member and vice-chair, Agriculture, Food and Rural Affairs Appeal Tribunal/Board of Negotiation.

The Chair (Mr. Ernie Hardeman): Our second interview is with Susan Whelan, intended appointee as member and vice-chair of the Agriculture, Food and Rural Affairs Appeal Tribunal/Board of Negotiation. Ms. Whelan, if you wish to come forward. Thank you very much for coming forward today and participating in the process. We will open the floor for you to make a brief presentation, if you wish to do so. Following the presentation, we will then have 10 minutes for each party on the committee to ask questions to your presentation and to your application. Hopefully, at the end of that, we will all be better informed and we will be able to make a decision on your appointment. Thank you very much for coming forward, and we'll open the floor to you.

1030

Ms. Susan Whelan: Thank you very much. Good morning, members of the committee. I'd like to thank the committee for having me here this morning to discuss my proposed appointment to the Agriculture, Food and Rural Affairs Appeal Tribunal/Board of Negotiation.

I know that you may have had the opportunity to review my background and qualifications, but I thought I'd highlight just a few and why I've applied for this particular appointment.

For over 20 years, I've worked in the private and public sectors, both as a lawyer and a parliamentarian, and more recently as CEO for the Canadian Cancer Society for Ontario.

Throughout my career I have maintained my status with the Ontario bar and updated my legal skills and knowledge as a lawyer.

As a parliamentarian, I served in a number of different capacities that provided experience that would be beneficial to this appointment. I served as a member of the public accounts committee, vice-chair of the finance committee and I chaired the committee on industry, science and technology for over five years.

In addition, my political background and knowledge of agriculture and its related industries is well known. I've been surrounded by agricultural issues my entire life. My father was a federal member of Parliament when I was born, so I guess you could say I was born a Liberal. And you can certainly guess what the discussion was around our breakfast and dinner table as I grew up on a cash crop farm, as the daughter of the federal Minister of Agriculture.

As a federal member of Parliament, I represented a rural and urban riding, and I was a very active member of the rural caucus and the Prime Minister's task force on agriculture. My door was always open for the farming community and its related organizations, which I think are the backbone of rural Ontario. I'm a strong believer that healthy rural communities are important for growth in Ontario.

During my time as Minister for International Cooperation, I led an effort to ensure that agriculture and rural development was re-energized on an international scale. Today I continue to remain active in this regard as a member of the Yara board for the African green revolution.

As I said a few moments ago, I was born into a Liberal family and continue to believe in those values today: a balanced social, economic and just society. And yes, I do have many friends who are Liberals, but I also have many friends who are not. I believe that my ability to be non-partisan is evidenced by both my term as chair of the Standing Committee on Industry, Science and Technology and also by the fact that when I left politics in 2004, I was recruited by the late Leon Paroian, a very well known Conservative in Windsor, to join his law firm specializing in administrative, environmental and public policy law. When I joined the Canadian Cancer Society, I stepped down from any active involvement in politics and fully recognize and understand the rules for future political activity if I'm accepted for this position.

Shortly after I stepped down from my role with the Canadian Cancer Society, I spoke directly with the chair of the tribunal and applied for this particular position because it would allow me to utilize my legal background

and experience as a committee chair, and it would further my interest and my passion for both fair and due process in the law and for agriculture and rural development.

The values and operating principles of the tribunal of finding facts from evidence, respect and consideration, fairness, accessibility, continuous professional development and adherence to the principles of adjudicative process and endeavouring to reach consensus in a decision-making process are all values and principles that I fully support and believe in.

I'd like to thank the committee for inviting me here today, and I'd be pleased to answer any questions that you may have.

The Chair (Mr. Ernie Hardeman): Thank you very much. We will start, then, with the questioning. Since we did start with the government side, we will go to the official opposition to start this one.

Ms. Lisa MacLeod: Welcome, Ms. Whelan, to committee. It's great to be here. I'm sure you're happy to be here as well.

You obviously have a lot of knowledge of the agricultural industry. I'm just wondering if there's anything specific from your past that you think you could bring to the table here, whether it's with milk marketing or—we're going to be dealing with drainages and the Drainage Act, which hits my local riding. I'm just wondering if you have any experience with some of the legislation you'll be adjudicating on.

Ms. Susan Whelan: I don't know all of the legislation in and out yet. There are over 20 statutes that the tribunal is responsible for. But I am familiar with some of the different issues, having represented clients in the past in rural constituencies, from the perspective of a member of Parliament and from a legal perspective. Most recently, I was involved in a drainage issue in my local community, but it hasn't gone to the tribunal yet.

Ms. Lisa MacLeod: What do you hope to accomplish in this tribunal? Do you have a vision for agriculture?

Ms. Susan Whelan: Actually, I'm quite impressed by what I've been able to read so far about the tribunal, that they've actually been able to improve the satisfaction rate of the people who have been appearing before it and the information that's coming forward, and I'd like to see that continue. Obviously, it's quite high right now. At the same time, the fairness and the due process is something that I think is important in making sure that people don't necessarily have to appear with counsel and feel that they're having a full and adequate hearing.

Ms. Lisa MacLeod: What do you think the biggest issue is facing Ontario agriculture today?

Ms. Susan Whelan: That's probably not for me to answer. I think there are many issues probably facing it, but I think that rural communities across the province of Ontario have a number of different issues.

Ms. Lisa MacLeod: Yes. What would be the main agricultural issues in your Windsor-Essex area? I know my community, for example, has a lot of beef, a lot of cattle farming, a lot of grain and oilseed.

Ms. Susan Whelan: Perhaps one of the best-kept secrets about Essex county is that it actually is probably the most diverse agricultural area in all of Ontario. You would find every type of agriculture, from the supply management, to the beef, to the greenhouse sector, to the cash-crop farming. It's probably one of the most diverse.

Ms. Lisa MacLeod: You have some vineyards there too.

Ms. Susan Whelan: Yes. We'd like to think it's almost as large if not larger than the Niagara region, but we'll debate that.

Ms. Lisa MacLeod: Yes. My leader Tim Hudak and I spent some time there in the summer meeting with some vintners there. I didn't realize there was such a strong group there.

I'm not going to keep you too much longer. You're not with the Ontario division of the Canadian Cancer Society anymore?

Ms. Susan Whelan: No.

Ms. Lisa MacLeod: Just on a personal level, I hope your health is fine. And good luck.

Ms. Susan Whelan: Thank you.

The Chair (Mr. Ernie Hardeman): Thank you very much. To the government side?

Ms. Helena Jaczek: I'd simply like to thank you very much, Ms. Whelan, for appearing today. We believe you're eminently well qualified for this appointment.

Ms. Susan Whelan: Thank you.

The Chair (Mr. Ernie Hardeman): Thank you very much. Obviously, your presentation must have been very self-explanatory, and the questions were not near as—

Ms. Lisa MacLeod: I'm not sure. Is she a Liberal? Was she born a Liberal?

Ms. Susan Whelan: You know, it's a bit different to be on the opposite side, having chaired a committee for so long.

The Chair (Mr. Ernie Hardeman): Except from the presentations, I have absolutely no idea what political affiliation it was, but I did know her father quite well. We very much appreciated what he did for agriculture in Canada and in Ontario.

Thank you very much for coming forward, and we thank you very much for your time and your presentation. We also wish you well in your future endeavours. Thank you very much for coming in.

Ms. Susan Whelan: Thank you very much.

MR. JASON WADDEN

Review of intended appointment, selected by official opposition party: Jason Wadden, intended appointee as member, Mississauga Halton Local Health Integration Network.

The Chair (Mr. Ernie Hardeman): Our third interview this morning is Jason Wadden. Thank you very much for coming in. Mr. Wadden is an intended appointee as a member of the Mississauga Halton Local Health Integration Network. Thank you very much for coming in this morning. We will allow you an oppor-

tunity to make a brief presentation to the committee. Upon the completion of your presentation, we will start with the government side for questions. There will be 10 minutes for each party to ask questions, and hopefully we will all come out of the process more knowledgeable about your appointment. So thank you very much, and make your presentation.

Mr. Jason Wadden: Thank you, Mr. Chair, honourable members. It is an honour to be here to speak to you today. I'm honoured in two respects. It's always great to participate in an open, democratic process, but, more importantly for today, I'm both flattered and honoured to be considered for this position for the Mississauga Halton Local Health Integration Network.

I think everyone will agree around the table that health care is one of the most important things that a provincial government or any government can deliver to its constituents. So the chance of being given part of the stewardship of this public trust and a chance to participate in a real, meaningful way to make sure that we continue to have a universal, accessible, high quality and sustainable health care system is a great honour.

I do want to take a couple of minutes just to very briefly touch on a couple of points. The first is why I am applying to this LHIN; the second is what I believe I can contribute to this board; and third, I would like to clarify one or two pieces of information that may have been given to the committee with respect to my appointment and my background.

First, turning to, "Why the LHIN?" I think you will have seen from the materials that you were given on my background that I have no background in health care. I came to learn about the LHIN after I finished as a director at the Big Brothers Big Sisters of Halton board. At that point in time, I was looking for my next step in how I would contribute back to the community. That's when I first learned about the LHINs. Once I learned about them, I was really impressed that there was a way that citizens in the community can actually participate in a real, meaningful way in setting the direction and the scope, and make decisions in our health care system.

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I started doing some background information, trying to get in touch with people in the health care sector, as well as talking to public policy advocates in the health care sector, and I became really interested in the issues that are facing health care today.

There are two main issues that I think are going to make the next couple of years really important. We've all seen the reports that have said our health care system may not be sustainable in 10, 15 or 20 years. This is a huge problem for us. So I think the time is now that we need to address it and, on a personal level, being able to contribute in that respect is really meaningful.

The second big issue we have is the great recession, and whether or not you say it's over—that's still to be debated—the effects of the great recession are going to continue to be felt. The government is going to have a tougher time generating revenues and we have to find

savings somehow, somewhere. I think participating in the next little while is a great challenge but also a great honour.

The other thing that really struck me when I was doing some research into the health care system is the fact that even Tommy Douglas back in the 1950s, when he was trying to bring in universal health care, realized that health care is going to progress in two stages, and the first was acute care. We've done that really well. We have hospitals that can be accessed by anyone, but what we need to do now is a better job of managing chronic care problems. I think this is going to require us to reconsider what health care means and to educate the public and get them thinking in different ways.

On a personal note, when I look at my kids—if I am given this opportunity, I want to be able to look at them and say that I did the best that I could to make sure that there is a sustainable, universal health care system going forward.

The next point is, what can I contribute to this board? As I said, I have no background in health care other than the research I did when I first learned about the LHIN, but I think that is a benefit. What I do not think would be a good thing for any LHIN is to have a group of people who come from the health care sector, who bring with them that perspective and all that background, because you always run the risk of not being able to look at things in a fresh light and not necessarily tapping into what the community's views are. I think my lack of experience in health care is a benefit to this board. Mind you, you do want to have some people with experience in the health care sector, but I think that my lack of that experience is a positive.

The other thing I bring to the table is a background in board governance. As a corporate commercial litigator at Goodmans, I often deal with issues of board governance and directors' liability, so I'm very well aware of those issues and what boards need to do.

The other thing I bring is some background on the board level. When I was in university, I was on the student union, so there were a lot of governance issues that we had to deal with there. In Big Brothers Big Sisters, as well, we dealt with a lot of governance issues, when you're dealing with public trust and charitable donations.

The last thing I bring is the community perspective. Part of the reason why, at least as I understand it, the LHINs were implemented was to be able to tap into the community's views. As a father of a young family, I'm part of a demographic that tends not to be represented on LHIN boards; they are very time consuming. But this is something that I have talked to my wife and my work about, and we're all excited about the potential opportunity to participate.

The last point I'd like to raise is just a clarification on my background. I believe that some of the materials that were provided by the LHIN board on my background said that I was a policy adviser or a staffer to MPP Kevin Flynn. That is inaccurate. I have never been a paid em-

ployee of Kevin Flynn—any MPP. I've never been retained or hired by any political party. In the past, I was a director of the Oakville Provincial Liberal Association, which is the riding association. In October, the former president stepped down and I was elected as the president. That was on October 5, 2009. Upon learning that cabinet had approved my appointment to the LHIN, subject to the committee's view and the whole process, I resigned. So effective Friday, I have stepped down, both as the president and a director of the Oakville Provincial Liberal Association.

Those are my opening comments, and I look forward to your questions.

The Chair (Mr. Ernie Hardeman): Thank you very much. We will now go to the government side.

Ms. Helena Jacek: Thank you, Mr. Wadden. We have no questions from the government side.

The Chair (Mr. Ernie Hardeman): Thank you very much. The official opposition?

Ms. Lisa MacLeod: Welcome, Mr. Wadden. It's great to have you here today.

Just a couple of quick questions from me. I didn't receive the document that said you worked for MPP Kevin Flynn, but thanks for clearing that up and letting us know that you were a member of his riding association. That actually just spawns a question I wasn't going to ask, because I didn't know, but did he approach you for this position, or did somebody from the Liberal government?

Mr. Jason Wadden: No, he didn't. As I mentioned, my time at Big Brothers Big Sisters came up. We had sunset clauses on the number of years that a director could sit on the board, and my time was coming up. We had some succession issues, so I stepped down. I knew Kevin at that point in time, and I approached him and asked him what other agencies or organizations in the community were looking for someone with my particular skill set. He directed me to the Public Appointments Secretariat website, but he did suggest, you know, "The LHIN might be something you might be interested in. Go take a look and come back." I went, I looked, I saw some appointments were coming up, and then I applied. I was then contacted by the LHIN and went through a couple of different interviews with the directors.

Ms. Lisa MacLeod: One of the big issues—and you'll probably hear this when you're dealing with health care professionals—about the LHIN is that it sort of seems like it's another bureaucracy and it's debatable whether they work or not. I guess that's not really my point right now in this line of questioning, but my question is, how do you ensure that hospitals in your region—and I know they need a new hospital in your area—are going to get the operating funds that they need? I mean, it seems like the biggest issue whenever I speak to health care professionals, particularly administrators in hospitals, is that they never know what their funding is going to be because the LHIN hasn't decided it. It puts them in a very difficult situation.

Mr. Jason Wadden: Right. I think one of the challenges right now is that we're still in a transition period. I mean, the LHINs are still relatively new. Hospitals don't know what to expect. LHINs are sort of figuring out where they stand and the processes that they want to adopt.

I think the most important thing that has to happen—and I think it is happening, at least in the Mississauga-Halton area—is good communication lines with the hospitals so that they understand the process of how and when funding is going to be adopted. I understand that the ministry is also working on some models to try to determine the best way in which to fund hospitals. So I think once that process gets done, there will be a better understanding throughout the system of how funding is to take place.

Ms. Lisa MacLeod: Now, you seem to have an extremely open mind to the health care system and its evolution. I guess I'm wondering if you see any private delivery of health care being an option in Ontario. It seems you understand that there's only so much money, and just listening to you, it sparked my interest.

Mr. Jason Wadden: I think what we have to look at is what our fundamental values are when it comes to health care. Health care has been extremely important to Canadians. When we look at the most important, fundamental issues, they are universality and accessibility. People need to be able to go to a hospital and not worry that they have to mortgage their house because their kid is sick or their parent needs some additional care. I think that's the underlying base where we come from, and I think that's critically important for us to maintain and protect. It's a tough thing, and I think we have to be open to that.

The reality is that in our system there are already some levels of private care. You know, we've got the Shouldice clinic and we have some organizations like Medcan that private firms will send employees to. So there is an element of private care, and that seems to be working fine right now. As we move forward, I think we have to keep an open mind, and that's my take, that we have to keep an open mind to it. We have to protect universal health care and accessible health care. I do know that CCACs, community care access centres, also send some services out to tender, such as dietitians and nutritionists, so that's a private sector element in health care, and that seems to be working. So I think we cannot close our minds to any options. But we do need to protect universal—

Ms. Lisa MacLeod: Well, that's refreshing to hear. It is really refreshing to hear.

I just have a final question, because we're going down that road where we have to keep our options open. As you know, Ontario has just implemented the HST, and come July 1 another 8% will be put on some goods and services. In particular, home care and long-term care will see an 8% increase. According to the Ontario Home Care Association, the HST is going to place an additional financial burden on thousands of Ontarians who purchase their health care services, which could be anywhere from

\$260 to \$350 per individual. The Ontario Long Term Care Association says that the HST will saddle long-term-care homes with an additional \$12.2 million in additional operating costs, with service reductions as their only cost-management alternative.

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In speaking with the hospital administrators in my community and actually having asked the finance officials what overall impact the HST would have on the health care system—they didn't have an answer—there's a real problem, because we're an aging population. You're in a high-growth area, so you're going to have a lot of seniors migrating to that community for easier living in condos and the like; it's also a beautiful community, Oakville. How do you think that's going to impact the health care system in your LHIN?

Mr. Jason Wadden: I think the issue of how the HST is going to affect any sector, not just the health care sector, still remains to be seen. To be quite frank, I don't know enough about the impact and the financial issues. I have read a number of different varying reports on the HST. I think one thing that has been realized is that the first year is going to be the toughest year because, again, it's a transition year. As far as the long-term effects, when we're talking about retirement homes, where it's a private delivery, there is competition there—

Ms. Lisa MacLeod: It's also long-term care, though.

Mr. Jason Wadden: And long-term care. To be quite frank, I don't know enough to answer that question because, to the extent that it's something that is covered by government insurance, it shouldn't be an issue, I wouldn't think. To the extent that it's something that people do have to pay for out of their own pockets and to the extent that there is competition, then the competitive market model should work and the prices should be lower because the costs to those organizations should reduce. So we should see a reduction in the price, or at least prices should stay roughly the same.

Ms. Lisa MacLeod: All right. I actually disagree with you on that one, but I am going to support your candidacy. I think you were very frank here today; I appreciate that. Take care.

Mr. Jason Wadden: Thank you.

The Chair (Mr. Ernie Hardeman): Again, the third party was unable to be here, so that concludes the interview. We thank you very much for taking the time to come and present your credentials, and we wish you well in your future endeavours.

Mr. Jason Wadden: Thank you for your time.

The Chair (Mr. Ernie Hardeman): That concludes the interviews this morning. We now move to the concurrences.

We'll consider the intended appointment of Raymond Hession, intended appointee as a member and chair of eHealth Ontario. Do we have someone to move the concurrence?

Ms. Helena Jaczek: I would like to so move.

The Chair (Mr. Ernie Hardeman): Any further discussion on the appointment? If not, all those in favour? Opposed? The motion is carried.

Our next consideration is Susan Whelan, intended appointee as a member and vice-chair of the Agriculture, Food and Rural Affairs Appeal Tribunal/Board of Negotiation. Do we have a motion to move the concurrence?

Ms. Helena Jaczek: I would like to move that.

The Chair (Mr. Ernie Hardeman): Discussion? No discussion. All those in favour? Opposed? The motion is carried.

The third one is consideration of the intended appointment of Jason Wadden, intended appointee as a member of the Mississauga Halton Local Health Integration Network. Someone to move the concurrence?

Ms. Helena Jaczek: I so move.

The Chair (Mr. Ernie Hardeman): Any discussion? If no discussion, all those in favour? Opposed? The motion is carried.

That concludes the concurrences on the appointees. Is there any other business for the committee? If not, the committee will stand adjourned at the call of the Chair. Thank you very much again for coming forward this morning and getting some of these appointees through. The committee stands adjourned.

The committee adjourned at 1055.

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